LA VNZme PART des Reports de Sr. Edw. Coke Chiualier, chiefe Iuſtice Dengleterre des plees deſte tenus deuant le Roy meſme aſsignee, & *del Counſeil prive d'Eſtat: des diuers reſolutions & Iugements* donez ſur ſolennes arguments & auec grand deliberation & conference des treſreuerend Iuges & Sages de la Ley, de caſes en Ley queux ne fueront vnques reſolus ou adiuges par deuant: Et les reaſons *& cauſes des dits Reſolutions & Iugements.*

Publie en la Troiſieſme an de treſhaut & treſ-illuſtre IAQVES Roy Dengleterre, France & Ireland, & de Eſcoſſe le 49. le founteyne de tout *Pietie & Iuſtice, & la vie de la Ley.*

PROV. cap. 11. ver. 3.
Simplicitas iuſtorum diriget eos; & ſupplantatio peruerſorum vaſtabit eos.

PROV. cap. 12. ver. 3.
Non roborabitur homo ex impietate; radix autem Iuſtorum non commouebitur.

Compendaria res improbitas, virtus longa.
Compendia, ſunt diſpendia.

Printed for the Societie of Stationers,
Anno Dom. 1619.

Cum Priuiledgio.

DEO,

PATRIÆ,

TIBI.

MVltos ſcribendi Libros, dicit Salomon, nullus eſt finis; quod intelligitur de bijs, qui nec metam ſibi, nec finem proponunt aliquem: Loco igitur Præfationis (Docte Lector) ſubſtantiam Caſuum in hoc vndecimo Opere meo emiſſorum, paucis edocere decreui: quo facile eorundem finem & intentionem colligere poßis.

In primo loco caſum Baronis la Ware, *decretum in Parliamento* Anno 39. Eliz. *tento retuli: vbi conſtat de inhabilitatibus perſonalibus & temporarijs, quæ hæredem, à vindicando titulos & dignitates ab anteceſſore ſic inhabilitato, ſeu ab aliquo alio ſuperiore anteceſſore, non impediunt; & de inhabilitatibus in lege abſolutis & perpetuis.* 1

Sequitur in ſecundo loco Caſus Auditoris Curle, *Anno ſeptimo fælicißimi regni Regis noſtri* Iacobi *adiudicatus: in hoc caſu Judicialia Officia in reuerſione concedi non poſſe, immo omnes huiuſmodi conceßiones generaliter per communem legem Angliæ penitus eße irritas determinatur, ideoq; licet caſus iſte ad Meridianum Curiæ Pupillorum calculetur,* 2

Lectori.

Per computationem tamen, omnibus Angliæ Curijs Iudicialibus inſeruiat: Caſus proculdubio in lucem proferri neceſſarius, & Lex hiſce temporibus debitæ executioni demandanda: vbi etiam multa tractantur particulariter de Officio dicti Auditoris Curiæ Pupillorum.

3. *Caſus deinde accedit* Iohannis Heydon *equitis, Termino Trinitatis anno decimo* Iacobi *Regis determinatus; in quo perſpicue oſtenditur, vbi damna ſeperaliter taxabuntur per Juratores, & vbi primus duodecem viratus inter quærentem & vnum defendentium, taxabit damna, pro omnibus defendentibus, & vbi non: vnde libri inter ſe pugnantes optimè reconciliantur; qui dum minus rectè intelligebantur, multa arreſtata fuerunt Judicia & multa, quæ lata fuerunt, per Breue de Errore ſubuerſa fuerunt, ad immenſum diſpendium, moram, & vexationem partis grauatæ.*

4. *Poſt hunc ſe apperit caſus de* Priddle & Nappei *de termino Michaelis anno decimo* Iacobi *Regis: in quo edocetur quæ vnitas iuxta Statutum de anno triceſimo primo* Hen. octaui, *ad exonerandam terram de Decimis ſatis eſt, cum diuerſis alijs de eadem re Articulis.*

5. Proxime *ſe repræſentat caſus Doctoris* Grant, *Termino Michaelis anno vndecimo Regis* Iacobi *decretus: vnde videre eſt, in quo caſu Rectores & Vicarij habere poſſunt quaſdam decimas pro domibus in Ciuitatibus, Burgis, &c.*

6. *Caſum deinde euolues* Henrici Neuill *equitis, Termino Michaelis anno vndecimo* Iacobi *Regis adiudicatum, vnde manerium Cuſtumarium per tranſcriptum Apographum ſiue (vt loquimur) per copiam teneri poſſe, tum & huiuſmodi Dominum Curias tenere, & tranſcripta concedere poſſe intelliges.*

7. *In Doctoris* Ayraye *caſum, de Termino Michaelis anno vnde-*

vndecimo Regis Iacobi, iam oculos intendas: in quo, Quæ sunt materiales male nominationes Corporationum, tam ad proprias suas concessiones, quam ad concessiones in eas collatas ob errorem proprij nominis eneruandas. Casus sane, qui non solum Collegiorum & aliarum Corporationum, sed etiam Firmariorum aliorum, sub ijs rem sibi vendicantium commodum spectat & tranquillitatem.

Dehinc oculis vestrum subijcitur Henrici Harpur casus Termino Trinitatis anno duodecimo Iacobi Regis, iudicatus: in quo viri edocentur, Quomodo, hij qui tenent de Rege per seruicium militare in capite, duas partes terrarum suarum &c. pro debitis suis soluendis, vxore efferenda, & filijs natu minoribus promouendis vel aliter secundum lege possunt disponere, nullam omnino post obitum suum inter hæredem et Legatarios inquietationem seu questionē relicturi: Ignorantia cuius, si non destructionis, magni tamen familiarum multarum damni in causa hucusq; fuit. 8.

Perinde Henrici Pigot casum reuoli, ad Lectorem instruendum, qualis immutatio alicuius scripti post sigillationem & deliberationem, & per quem vacuum reddit scriptum. 9.

Te demum expectaturum & optaturum opinor, casum Alexandri Poulter, cui sceleratissimè & felonicè oppidum illud lautum Newmarket incendebat; qui post considerationē variorum Statutorum perplexorum & male compositorum tandem (vt obserues) à beneficio clericatus penitùs fuit exclusus: Quo etiam multa imprimis notanda de Clericatu, ad vitam hominis quodam modo spectantia determinantur. 10.

Ac ne erratum esset in ferendo Brene de Errore, casus Metcalfe de Termino Michaelis anno duodecimo Iacobi Regis proximam sibi sedem sortitus est; vbi plenè discussum est, super quo Iudicio siue Arbitrio Breue de Errore emanare potest, & e contra. 11.

12. *Quin &, vt declinetur error in arrogandis mulctis pro contemptibus in Letis & alijs curijs de recordo, in casu* Ricardi Godfrey *armigeri delucide decernitur, vbi oportet mulctã esse separalem & vbi coniunctam, & quomodo mulcta illigitimè imposita euitetur, & quando Dominus pro certo Leti distringere potest* Mich. 12. Iacobi.

13. *Casus* Ricardi Liford *locum sequentem meritò sibi obtinuit; quia in eo adiudicatur, quid interesse Firmarius habet in arboribus structuræ idoneis quando non sunt exceptæ; & quid interesse in eodem casu est Locatori, & quid & quale interesse Firmarius habet in arboribus exceptis, & vtrum in eodem casu per generalem concessionẽ reuersionis transferuntur illi cui concessio facta fuit, cum multa eruditione de hac re necessaria,* Mich. 12. Iacobi.

14. *Deinceps operatorum pannorum Gipuuicensium habes casum, valde necessarium pauperibus Mechanicis, qui, multoties colore ordinationum constitutarũ per incorporationes (in quibus bonum publicum prætenditur priuatum vero intenditur) à libero vsu artium suarum excludentur vel saltem impediuntur.* Mich. 12. Iacobi.

15. Edwardi Sauell *casus limites non ita latos occupat, sed breuiter ostendit, quod breue de* Ejectione firmæ *(quod in vsum frequentiorem iam accreuit) de loco certo nomine tantum denotato vsurpari non potest, sed de iugeribus fundi, prati, pasturæ, &c.* Mich. 12. Iac.

16 *Porro* Benthami *casus adeo paucis declarat verbis, quo modo omissio rei materialis in veredicto nonnunquam suppleri potest.* Mich. 12. Iac.

17 *Nec casum Doctoris* Foster *retinere potui, in quo, maturã post considerationem habitam de omnibus statutis in Sacrifuges editis, via aperta recluditur pro eorum merita & festina iuxta leges conuictione. Et hic sane casus enarrat gloriam Dei & Religionis nostræ honorem.* Mich. 12. Jacobi.

In-

Insuper casus Magdalenensis Collegeij in Cantabrigia, proximum ex merito sibi locum vendicat, qui tendit ad sustentationem verae Dei Religionis, eleuationem Artium liberalium & Scientiarum, supportationem status Ecclesiastici, praeseruationem & prosperitatem ambarum illarum sororum celeberrimarum Academiarum Cantabrigiae & Oxoniae, ac singulorum huius regni Collegiorum, nec non ad Zonodiorum & Prouisionum pro pauperibus firmamentum: & adiudicatus fuit Termino Paschæ decimo tertio Iacobi Regis. 18.

In temporis serie accedit casus Lodouici Bowles, *in quo, vera operatio ac sensus clausulae in Dimissionibus, Absque impetitione vasti, & quid interesse Firmarius habet in Maeremio domus à tempestate plenè decernitur prostratae.* Paschæ decimo tertio Iacobi Regis. 19.

Et quanquam ordine temporis non sequitur casus Monopoliorum, intempestiue tamen adesse non potest; vbi plurima de Monopolijs liquide determinantur, quae in medium proferri digna sunt. Trinit' quadragesimo quarto Elizab. 20.

Nec Comitis Deuoniae Casum, adiudicatum Hillar' 4. Iacobi, *vbi Prærogatiua Regis in hoc apparet manifestè, Quod ius eius restitutionis non moritur, per mortem personae qui iniuriam sibi inferebat, celare nequeo: cuius quidem finis est, quod vectigalia Regia ad proprium molendinum dirigantur.* 21.

Casus denique Iacobi Bagge, *determinatus* Trinitatis decimo tertio Iacobi Regis, *edocet in quo casu Breue* Restitutionis *pro municipe alicuius incorporationis exurbitato acquiri potest, & incidenter qui habent potestatem exubitare, & quae sunt causae sufficientes exurbitationis.* 22.

Hoc

Lectori.

Hoc vndecimum Opus (erudite Lector) in hac tempestate multorum aliorum arduorum & instantium negotiorum emissi; Ideoque (vt in votis mihi fuit) perpolire non potui. Si mihi in hac re fore Iudex liceret, casuum huiusce libri materiam nulli superiorum secundam esse affirmarem. Deniq; vt sit Deo gloria, Regis Maiestati honor, bono publico incrementum, Docto stabilimentum, & Studenti instructio, scopus est quem mihi in hac editione proposui.

DEO,
PATRIÆ,
TIBI.

OF writing of many Bookes, ſaith *Salomon*, there is no ende; which is vnderſtood of ſuch as are written to no end: I meane therefore, learned Reader, by way of Preface to propoſe vnto you in fewe words, the ſubſtance of the Caſes in this eleuenth worke, whereby you will eaſily collect the ende and ſcope of the ſame.

In the firſt place I report the Caſe of the Lord *La Ware*, reſolued in Parliament holden in the 39. yeare of the reigne of Queene *Elizabeth*; wherein appeareth what diſabilities are perſonall and temporary, and barreth not the heire to claime honour and dignitie from that aunceſtor ſo diſabled, or from any other aunceſtor peramont him; and alſo what diſabilities are in law abſolute and perpetuall. 1

In the ſecond place followeth Auditor *Curles* caſe, reſolued in the 7. yeare of the moſt happy raigne of King *Iames:* in this caſe is reſolued, that iudiciall offices cannot be granted in reuerſion, but that generally ſuch graunts by the Common Law of England are vtterly 2

voıd,

void, and therefore though this Case bee calculated for the Meridian of the Court of Wards, yet by computation it may serue for all the Iudiciall Courts of England: a necessary case I assure you to be published, and the Law to be put in vre in these dayes: In which case are also handled some other particular poynts concerning the office of the said Auditorship in the Court of Wards.

3. Then commeth in Sir *Iohn Heydons* case, adiudged in Trinitie Terme 10. *Regis Iacobi*; wherein is perspicuously expressed, where dammages shall bee seuerally assessed by the Iurours; and where the first Iurie betweene the Plaintife, and one of the Defendants shall assesse dammagas for all the Defendants, and where not: whereby all the Bookes are well reconciled, for want of right vnderstanding whereof, many iudgements haue beene arrested, many that haue beene giuen, haue beene ouerthrowen by Writ of Errour, to the great charge, delay, and vexation of the partie grieued.

4. After this appeareth the Case of *Priddle* and *Napper* in *Mich.* 10. *Iacobi Regis*; and therein is set downe what vnitie is sufficient within the Statute of 31. *H.* 8. to discharge the land of tithes, with diuers other points concerning the same.

5. Next after, Doctor *Graunts* case presenteth it selfe, adiudged *Mich.* 11. *Iacobi regis*, wherby you may see where Parsons and Vicars may haue certaine tithes for houses in cities, boroughes, &c.

6. Then you shall reade the case of Sir *Henry Neuill*, adiudged *Mich.* 11. *Iacobi Regis*: and vnderstand that a customary mannor may be holden by copie, and that such a Lord may hold courts, and grant copies.

7. Now cast your eie vpon Doctor *Ayrayes* case, adiudged *Mich* 11. *Regis Iocobi*; wherin you shal perceiue what

be

be materiall miſnamings of corporations, either to auoyde their owne graunts by miſtaking their owne name, or graunts made to them: a caſe that concernes the good and quiet, not onely of Colledges and other Corporations, but of their Farmors, Leſſees, and other that claime vnder them.

Then is offered to your view *Henry Harpurs* Caſe, reſolued *Trin'* 12. *Iacob. Regis*: wherein men are directed how the Kings tenant that holdeth by Knights Seruice *in capite*, may diſpoſe two parts of his lands &c. for the payment of his debts, aduancement of his wife, preferment of his younger children, or otherwiſe according to Lawe, and leaue no trouble or queſtion after his death, betweene his Heire and the Deuiſees; the want of knowledge whereof hath tended, if not to the vndoing, yet to the great hinderance of many families. 8

Next to this, haue I reported *Henry Pigots* Caſe, adiudged *Trin'* 12. *Iacob. Regis*, to inſtruct the Reader what alteration of any deed after the enſealing and deliuery, and by whom, auoideth the deed. 9

By this time I preſume you haue expected, and deſired to ſee the caſe of *Alexander Poulters*, that moſt wickedly and felonioufly, burnt the good Towne of Newmarket, who vpon conſideration of many intricate, and ill penned Statutes, in the end was clearely (as you ſhall perceiue) ouſted of his Clergie: wherein many notable and obſeruable poynts concerning clergie, which by a meane concerne the life of man, are reſolued *Mich.* 12. *Iacobi Regis*. 10.

And leſt there ſhould be error in bringing of a writ of error, *Metcalfes* caſe, *Mich.* 12. *Iac.* hath gotten the next place: wherein is plainely diſcuſſed, vpon what iudgement or award a writ of error doth lie, and vpon what iudgement or award it lieth not. 11.

And

12. And to auoyde errour in impoſing of Fines vpon contempts in Leetes, and other Courts of Record. In the caſe of *Richard Godfrey* Eſquire is clearely reſolued, when the fine ought to bee ſeuerall, and when ioynt, and when and how a fine vnlawfully impoſed, may bee auoyded, and when the Lord may deſtreine for Court Leetes. *Mich.12.Iac.*

13. The next roomth *Richard Liſords* Caſe hath iuſtly gotten, for therein is reſolued, what intereſt the Leſſee hath in Timber trees, when they are not excepted, and what intereſt in that caſe the leſſor hath: what and what maner of intereſt the leſſor hath in trees excepted, and whether, in that caſe by a generall graunt of the reuertion, they paſſe to the grantee, and much neceſſary learning concerning that matter. *Mich.12.Iac.*

14. Then haue you the Caſe of the Tailleurs of Ipſwich, a neceſſary caſe for poore Tradeſmen, that many times are by odinances made by Incorporations, (whereby the publike good is pretended, and priuate reſpects intended) barred or hindred of their Freedome of their trade. *Mich.12.Iac.*

15. *Edward Sauls* Caſe taketh vp a very little ſtanding, and ſhortly ſheweth that an *Eiectione firmæ*, (that now is growen ſo common) lieth not for a place knowen, but of certaine acres of land, meadow or paſture &c. *Mich. 12.Iac.*

16. And *Benthams* Caſe in as fewe wordes as the other, ſheweth how in ſome caſe the omiſſion of matter materiall in a verdit may be ſalued. *Mich.12.Iac.*

17. I could not keepe backe *Doctor Fosters* Caſe, wherein, vpon mature conſideration had of all the Statutes of Recuſants, a cleare way is opened, for their iuſt and ſpeedy conuiction according to the lawes: a Caſe that concerneth the glory of God, and the honour of our religion. *Mich.12.Iac.Regis.*

And

And iuſtly doth the Caſe of *Magdalen* Colledge in Cambridge challenge the next place: which tendeth to the maintenance of Gods true Religion, the aduancement of liberall Arts and Sciences, the ſupportation of the Eccleſiaſtical ſtate, the preſeruation and proſperity of thoſe two famous Siſters, the Vniuerſities of Cambridge and Oxford, and of all the Colledges within the Realme, and the eſtabliſhment of Hoſpitals, and prouiſions for the poore; adiudged *Paſch.* 13. *Iacobi Regis.* 18.

And in courſe of time doth *Lewes Bowles* caſe come, wherein, is clearely reſolued the true operation and ſence of the clauſe in Leaſes, without impeachment of waſte; and what intereſt the leſſee hath in the timber of an houſe proſtrated by tempeſt, adiudged *Paſch.* 13. *Iacobi Regis.* 19.

And though it commeth not in ſequence of time, yet the caſe of Monopolies, cannot come out of time, wherein diuers things, concerning Monopolies, are clearely reſolued, and worthy to bee publiſhed, *Trin.* 44. *Eliz.* 20.

And I could not keepe backe the Earle of Deuonſhires caſe, reſolued *Hill* 4. *Iacobi*, whereby, the prerogatiue of the King appeareth; That his right of reſtitution dieth not by the death of the party that doth him wrong: the end whereof is, that the Kings tolle may come to the right Mill. 21.

And laſtly, the Caſe of *Iames Bagge*, adiudged *Trin.* 13. *Iacobi Regis*, wherein is reſolued, where a Writ of Reſtitution, for a Freeman of an Incorporation, being disfranchiſed, doth lie: and incidently, who haue power to disfranchiſe, and what be ſufficient cauſes of diſfranchiſement. 22.

This

To the Reader.

This eleuenth Worke (learned Reader) I haue publiſhed in the tempeſt of many other important and preſſing buſineſſe; and therfore could not poliſh them as I deſired. If I might iudge, I ſhould ſay, that the matter of theſe are not inferiour to any of the other. The end of this Edition is, that God may bee glorified, his Maieſtie honoured, the common good encreaſed, the Learned confirmed, and the Student inſtructed.

Ann. 39. Reg. Eliz.

Le caſe de Seignior de la Ware.

AL Parliament tenus in Ann. 39. Reginæ Eliz. le caſe fuit tiel. Thomas la Ware Chiv., Seignior la Ware, filz et heire d William, filz & heire de George, frere et heire de Thomas, filz & heire de Thomas Seignior la Ware, exhibite ſ petition al Roigne a ceſt effect, q̄ lou le dit Thomas ſon beſaiel fuit appel a Parliament per briefe de ſommons Anno 3. Hen. 8. et puis ceſty Thomas le beſayel morust, apres que mort Thomas ſon filz fuit appel al diuers Parliaments p briefe de Summons, et puis p act de Parliament Ann. 3. E. 6. p̄ diuers cauſes in le dit act mentiõn fuit enact, que le dit William durant ſon vie ſerr̄ diſable a claymer ou enioyer aſcun dignitie or Seigniory en aſcun droyt eſtate, &c. per diſcent, remainder, ou auterment: et puis le dit Thomas filz de Thomas morust, apres que mort le dit William, eſteant iſſint diſable, ne fuit appel al aſcun Parliament p briefe de ſummons tanques le roigne Eliz. appel luy al Parliament p briefe de Summons, et ſea come puiſne Seigniour del Parliament, et puis il morust; Et ore le dit Thomas ſon filz eſteant appel ceſt Parliament p briefe de Summons, ſua al roigne que il puit auer le lieu in Parliament de ſon dit beſaiel, ceſtaſcauoir, inter le Seignior Berkley & Seignor Willoughby de Erſeby, Et le dit petition fuit endorſe in ceux parols (Her Maieſtie hath comman-

commaunded mee to ſignifie to your Lordſhips, that vpon the humble ſuite of the Lord la Ware, ſhee is pleaſed that the matter ſhall bee conſidered and determined in the Houſe. Rob. Cecill:

Quel petition eſteant lye in le vpper houſe de Parliament, le conſideration de ceo comunit al Baron Burghley Seignior Threſorer, et diuers auters committees, queux a ſon Chambre in le Whitehall oyont le councell erudite de ambideux ꝑties, in le ꝑſence des deux chiefe Juſtices, et diuers auters Juſtices. Et deux obiections fuer̃ faits encounter le claime del dit Seigniour la Ware. 1. Intant que ſon pier fuit diſable ꝑ act de Parliament a claymer le dignitie, le petitioner ne poet conueyer per luy que fuit diſable come heire a ſon beſaiel, et ꝑ conſequence il ne poet auer le lieu de ſon beſaiel, mes le lieu de ſon pier.

¶ Mes fuit reſolue ꝑ les Juſtices, que la fuit diuerſitie inter diſability ꝑſonall & tempozary, et diſability abſolute et perpetuell: come ou vn eſt attaint de treaſon ou felony, ceo eſt abſolute et perpetuell diſabilitie per cozruption de ſanke, ꝓ aſcun de ſon poſteritie a claymer aſcun hereditament in fee ſimple ou come heire a luy, ou a aſcun auter aunceſter paramount luy; mes quaunt vn eſt fozſque diſable per Parliament (ſaunz aſcun attaindre) a claymer le dignitie ꝓ ſon vie, ceo eſt perſonel diſabilitie ꝓ ſon vie ſolemt & ſon heire apres ſon mozt poit claymer come heire a luy ou al aſcun anceſtoꝛs paramount luy. Le ſecond obiection fuit, q̃ le dit William ad accept nouel creation del Roigne, quel dignity nouelment gaine diſcend al peticioner, q̃l il ne poet auer, & ꝓ c̃ le peticioner ne poit auer auter lieu que s̃ pyer auoit.

¶ A ceo fuit rſide et reſolue, que lacceptance dun nouel creation per le dit William ne poit noyer le petitioner, pur ceo que le dit William fuit a ceſt temps diſable et in verity ne fuit vn Baron mes ſolemẽt vn Eſquier, iſſint que quaunt le veiel & le nouel dignitie diſcend enſemble, le veiel ſerr̃ ꝓferre. Quel reſolution fuit bien apꝛoue per touts les Seignioꝛs committees: quel fuit accoꝛdant repoꝛt al Seignioꝛs del Parliament & allow ꝑ eux touts: ſur q̃ fuit oꝛdre per les Seignioꝛs, que le roigne ſerr̃ acquaint oue r̃ per le Seignioꝛ gardẽ del graund ſeale, q̃ fuit fait accoꝛd̃t, & le roigne ceo confirme auxi, tout que fuit oꝛdre & enter accoꝛdant: ſur q̃ al dit Parliament le Seignioꝛ la Ware in ſes pliament robes fuit ꝑ le Seignioꝛ Zouche (ſuppliant

le

le lieu del Seignior Willoughby donques deins age) et le Seignior Berkley auxi in lour Roabes ameine in le meason et placed in son dit lieu, cestasceauoir, prochein apres le Seignior Berkley: Garter Roy darmes attendaunt sur eux et fesaunt son Office. Et ieo fue accouncel oue le Seigniour la ware.

Hill.7. Iacobi Regis.

Auditor Curles caſe.

Eſt purueiu per leſtatute de 32. Hen. 8. cap. 66. That there ſhall be two perſons, to bee named by the Kings highneſſe, which ſhall bee called the Auditors of the landes of his graces Wardes, and ſhall bee called the fourth Officer of the ſame Court, **quel office eſt in part miniſteriall quant al auditing des accounts, et in part iudiciall, car il eſt iure per force del dit act,** That you ſhall not take nor receiue of poore nor rich any guift or reward in any matter or cauſe depending or to bee diſcuſſed in the ſame Court &c. **tout temps puis quel ſtatute les Auditors del dit Court ount office iudiciall, s. vn voice in chelcun cauſe dependant in meſme le Court: et in meſme leſtatute eſt vn prouiſo,** That Iohn Peryn, which by the Kings letters patents hath beene heretofore, and now is Auditor of his graces Wards lands, ſhal cõtinue & be one of the two Auditors mẽtioned in this Act during the terme of his naturall life. **Le Roy** H.8. an. 32. **de ſ̃ raigne, per ſes letters patents deſouth ſ̃ grand ſeale, nominate ⁊ conſtitute Iohn Perrient** vnum Auditorum curiæ ſuæ wardorum & liberationum, habendum **a luy pur terme de ſon vie oue vn fee ỏ** 40. **marks** per annum. **Iohn Perriant** an. 36. H.8. **ſurrender ſon eſtate ⁊ patẽ al Roy, ⁊** H.8. **p ſes lr̃es patẽ deſouth le graund ſeale,** in complementum tam prioris quã poſterioris actus (**s. ỏ** 32. & 33. H.8.) **grant al Io. Perrient ⁊ no. Tooke** officiũ vnius Auditorũ curiæ ſuæ wardorũ, habed' dictis Io. Perriẽt & Wil. Tooke coniũctim & diuiſim pro termin' vitarũ ſuarum & eorũ alterius diutius viuent̃, cum feodo 40. marcarum.

Perient

Perient morust An.6.E.6. & William Cooke exercise & enioy ioffice solement iesqz 30.Eliz. et donques morust. Le roigne Eliz. an.37. de son raigne, per ſes letters patents, in complementum &c. vt ſupra, graunta al Walter Cooke & William Curle Officium vnius Auditorum curiæ ſuæ Wardorum &c. habendum dictis Waltero & Willielmo & alteri eorum coniunctim & diuiſim pro termino vitarum ſuarum & eorũ alterius diutius viuentis. Nẽ Seignior le Roy que ore eſt, ann.4. durant les vies de Walter Cooke & William Curle per ſes letters patents (in queux eſt recite le graunt fait del dit office per le roigne Eliz. al Walter Cooke & William Curle) & in complementum &c. vt ſupra, graunt al John Churchill & John Cooke Officium vnius Auditorum curiæ ſuæ prædictæ, habend' eiſdem Ioh. Churchil & Ioh. Tooke immediatè poſt mortem prædict' Walteri Tooke & Willi. Curle vel eorum alterius diutius viuentis, vel à tempore quo officium illud per forisfacturam, ſurſum redditionẽ, ſiue quẽcunque alium modũ primò & proxime vacauerit, aut ad manus noſtras deuenire contigerit: Et puis John Churchil morust, & l' Roy, recitant ambideux les lres patt', lun fait al Walter Cooke & William Curle, & lauter al Joh. Churchil & John Cooke, in complementũ &c. vt ſupra, & ea intentione vt ſint duæ perſonæ poſt mortẽ aliquorũ prædict. Walteri, Will. & Iohann. qui ſint vocat' Auditores terrarum wardorũ ſuorũ, ſecundum vim & intentionem Act. prædict. grant al Rich. Percivall officium vnius Auditorũ curiæ ſuæ prædict. &c. habendum poſt mortem prædict. Walteri Tooke, Willi. Curle, & Iohannis Tooke, vel aliquorum duorũ eorũ qui citiùs mori contigerint, vel à tẽpore quo &c. vt ſupra. Et puis Walter Cooke morust, & William Curle, John Cooke, & Rich. Percivall sont in vie. In ceſt caſe diuers queſtions fuer̃ faits & argue per le councel erudite en ley dambideux parts a diũs iours, cibien en le terme de S. Mich. ore darrein paſſe, come in m̃ ceſty terme: & ſur bone conſideration & conference int̃ les ij. Chiefe Juſtices & Chiefe Baron, ceux points fuer̃ vnement reſolue.

¶ 1 Que les lres patt' fait al Joh. Perient & Wm. Tooke de officio vnius Auditorum curiæ ſuæ Wardorum fuer' bonæ, car com̃t q̃ leſtatut enact, q̃ ſer̃ ij. plons q̃ ſr̃ appel the Auditors of the lands &c iſſint q̃ ſer̃ ij. plõs & appel 2. auditors, vn̄ nõ forqz vnũ officiũ, & ils ambideux sont forqz vn⁹ officiari⁹, et iſſint leſtatute m̃ ple, ceux deux plons appel Auditors ſhal be called the fourth officer of the ſame Court, iſſint q̃ le graunt de

officio vnius auditoris, ou vnius auditorum, est assets bone, car mala grammatica non vitiat concessionem, et si le grant ust este in Anglois, s. The office of one Auditor, or one of the Auditors of the lands &c. Ceo ust este bone: & issint est le liure adiudge per laduice de touts les Justices in autiel case in 9. E. 4. fo. 1. ou le Roy E. 4. per ses letters patents anno 4. de son raigne graunt al William Swyzenden et John Bagot Officium vnius Clericorum de Corona in Cancellaria dicti domini Regis, pur terme de lour vies &c. Et in assise pozt in banke le Roy Catesby pzist exception a cest graunt, p̄ ceo que appiert que Officium vnius Clericorum est graunt a ij. & ne poit ẽe que ij. poent aũ loffice del vn, nient pluis que soit grant a ij. chiefe Justice de ceo place, ceo serra voiõ, car le matter in luy mesme pzoue que deux ne point ceo aũ in common, car nul poet ẽe Chiefe Justice forsque vn; mes Si officium Clerici de Corona soit graunt a ij. ceo est assets bone: et pluszs auters exceptions fuer pzise per luy: et le liure dit, que les Justices disoient, que ils auoient commune de touts ceux points oue les Justices del common Banke, et il semble a eux, que ceux matters fuer a nul purpose p̄ arrester le Judgement, & issint semble a nous, pur q̄ fuit agard, que les dits Swyrendon et Bagot recouera loffice, et ses dammages taxes per lassise &c. per quel resolution de touts les Justices appiert, que quant la est vn office del Clarke del Cozone in le Chaumcery, que est tout vn a granter officium vnius Clericorum de Corona &c. et a graunter officium Clerici de Corona &c. a deux, pur ceo que la nest forsqz vn office: issint in le case al barre la nest forsqz vn office et ij. persons a supplier ceo, et pur ceo le graunt bone; et in cest case cest parol vnius nest numeratiue, mes a noter le vnitie, particularity, & identity del office.

¶ 2 Fuit resolue, que coment que ceux deux persons appel auditozs sont forsqz vn officer, vncoze les parols in le graunt, s. Coniunctim & diuisim, & alterius eorum diutius viuentis, sont materiall; car si vn office soit graunt a ij. pro termino vitarum suarum (saunz pluis) per le mozt del vn de eux le graunt serra voyde, car esteant office de trust nul suruiuoz serra de ceo. Et in cest case nul suruiuoz poet este. car intant que est enact per lact de Parliament per que cest nouel Court fuit erect, que serr̄ ij. persons &c. queux ont (come est auantdit) iudiciall voice, le Roy ne poet constituter vn solemt, car le subiect per lact ad interest in ceo, & securiùs

expedi-

expediuntur negotia commiſſa pluribus: meſ le Roy poit conſtituter vn a vn temps per vn patent, ꝛ auter al auſ temps per auter patent; et coment que il poet iſſint faire, vncore ceſty que eſt primerment conſtitute, nad aſcun iudicial voice tanqz auter ſoit conſtitute, car eſt puruien per leſtatute que deux perſons ꝛc. ſerront vn officer; et pur ceo fuit reſolue, que ceux parols coniunctim & diuiſim, & alterius eorū diutius viuentis, ſeruera a ceſt purpoſe, q̄ le ſuruiuoz ꝑ vn des plons a q̄ vn auter ſerra adde.

¶ 3 Fuit reſolue, q̄ ceſt nomination p le Roy couſt eſte delouth le graund ſeale Dengliterre, ꝛ ne per bouche, ne per le priuy ſeale, ne ſignet, ꝛc.

¶ 4 Fuit reſolue, que le graunt fait per le Roy a John Churchil ꝛ John Tooke in reuerſion puis le moꝛt de Walter Tooke et William Curle, fuit voyd, pur trois cauſes. 1. Pur ceo que ceo eſt come ad eſte dit vn iudicial officer, car ceux Auditoꝛs ſont vn des Judges del Court: ꝛ ſicome nul poet doner aſcun Judgement des choſes queux eſchiet̄ in futuro, iſſint nul poit eſte Judge in futuro, ꝛ le rule eſt que officia iudicialia non concedantur antequam vacent: ꝛ grand inconuenience ſur ceo enſuet̄, car ceſty que al temps de graunt in reuerſion poit eſte able ꝛ ſufficient a ſupplier loffice de iudicature ꝛ dadminiſtre Juſtice al lieges le Roy, deuant que loffice eſcie, poit deueigne vnable ꝛ vnſufficient a perfoꝛmer ceo: Et fuit reſolue que neque loffice del Maſter del Wards, neqz del ſurueioꝛ neque del Attoꝛney de meſme le Court, poit eſte graunt in reuerſion, pur ceo que ils ſont iudiciall offices. 2. Coment que loffice ſoit in part iudiciall ꝛ in part miniſteriall, ꝛ offices miniſterial poient eſte grant in reuerſion, vncoꝛe intant q̄ deux perſons aūont ambideux ceux come vn office et vn officer, ceo eſt per lact de Parliament cy entier que ceo ne poit eſte deuide, car le Roy ne poit faire ij. Auditoꝛs del miniſteriall office, et ij. quant al iudiciall, car donques ſerr̄ iiij. perſons ꝛ lact reſtraine ceo a ij. ne le Roy poit faire vn perſon dañ le iudicial voice et lauter le miniſteriall office, car donq̄s ſerr̄ ij. officers, ꝛ ij. offices, et lact fait que vn officer, et donq̄s lun auera diſtinct office et voice, ou lact conioyne eux in ij. perſons. 3. Ceux parols in le dit grant in reū̄ſion, vel à tempore quo &c. officium illud per forisfactur', ſurſum redditionē, ſeu quemcunque alium modū &c. vacari contigerit, ne poient (ſi le miniſteriall office puit eſte ſolement graunt in reuerſion) prender effect per le moꝛt del

Walter

Walter Cooke, de faire auter a exerciſer loffice oue le ſur-uiuor, p̄ ceo q̄ graunt a deux, & donques ſi Walter Cooke vſt deuy durant lour deux vies, ſerr̄ troꝛ officers, ou lact reſtraine ceo a deux ſolement, & comment que lun mozuſt, t̄ ne fait grant q̄ eſt void al temps de feſant de t̄ bone: Auxi les parols ſont, quando officium illud &c. vacare contigerit, & t̄ in ceſt caſe ſerr̄ intend lentier office, & t̄ neſt void tanqꝫ apꝛes le mozt de ambideux les patentees in poſſeſſion.

¶ 5 Quant Walter Cooke mozuſt, oꝛe William Curle remainera vn des perſons &c. et le Roy poet adder auter a luy, et tanqꝫ auter ſoit adde ſon voice eſt ſuſpend, come in le caſe in 14. H. 4. fo. 35. ſi bꝛiefe iſſuit al viſcounts d̄ Londꝛes, et lun de eux mozuſt, lauter ne poit executer le bꝛiefe, pur ceo que ſon power eſt ſuſpend tanqꝫ il eit vn compagnion eſlieu a luy.

¶ 6 Fuit reſolue, que le graunt fait al Richard Perciuall eſt voyde. 1. Pur ceo que eſt iudiciall office, et (come eſt auantdit) ne poit eſt graunt in reuerſion. 2. Admittant que ceo poit eſte graunt in reuerſion, ceo recite le graunt fait al John Cooke & John Churchil come bone grant ou ceo fuit voide, & le graunt de Perciuall eſt a commencer apꝛes ceo, & iſſint le Roy deceiue in ſon grant.

Trin.

Trin. 10. Iacobi Regis.

Sir Iohn Heydens caſe.

SIR John Heydon Chꝛr poꝛt action de treſpaſſe de Battery, et wounding (que in veritie fuyt in cruell et barbarous manner (al Fakenham in Noꝛff. vers Fꝛoꝛmere Cockett, Thomas Cocket ⁊ Jeffrey Cobbe; Fꝛoꝛmere Cockett appiert, vers q̄ le pl̄ declare oue ſimul cum &c. Et Fꝛoꝛmere Cockett plead non culp. ⁊ ſur ceo Venire facias iſſuit ⁊c. Et puis Thomas Cockett appiert, vers que le pl̄ auxi declare oue ſimul cum &c. que pleade auxy non culp. ſur que auter Venire facias iſſuit; et ambideux ceux iſſues veignont a triall al Aſſiſes al Thetfoꝛd in Noꝛff. Anno 8. Iacobi Regis, deuaunt le Chiefe Juſtice del Banke, et in veritie liſſue vers Fꝛoꝛmere fuit pꝛimes trie, ⁊ les Juroꝛs aſſeſſont 200. l. dammages, ⁊ a meſme les Aſſiſes liſſue vers Thomas Cockett fuit trie, et de bene eſſe dammages fuer̄ aſſeſſe al 50. l. et le cauſe que moue les Juroꝛs a extenuater damages vꝛs les auters fuit, que coment que ilz touts fuer̄ dun partie ⁊ dun quarrell, vn̄ Fꝛoꝛmere Cockett fuit le pluis malicious ⁊ cruel, et ſon mayne dona les dit̄ barbarous ⁊ grieuous woũds. Jeffrey Cobbe appiert ⁊ confeſſe laction, ⁊ vꝛieſe denquirer de dammages agarde ſur le rolle, mes nul iſſuit. Et graund queſtion fuit moue ⁊ depend y diuers Termes, coment ⁊ vers q̄ur ⁊ pur queux dammages Judgement ſer̄ enter. Et al darreine fuit conſi-

deration

deration eue des preſidents et de noſtre liuers, fuit reſolue per totam Curiam come enſuiſt.

Le 1. point reſolue.

¶ 1 Primerment, quant in trñs vers diuers defendants ils pleadont non culp. ou ſeuerall pleas, & le Jury troue pur le pl̃ in tout, les Jurors ne poent aſſeſſer ſeuerall damages vers les defendants, pur ceo que tout eſt vn trñs & fait ioint per le pl̃ p ſon briefe et count; et coment que lun de eux eſt pluis malicious, et de facto fait pluis & greinder tort que les auters, vncore touts veignant a faire illoial act et dun partie, lact de lun eſt lact de touts de meſme le partie eſteants preſent. Et pur ceo in tiel caſe ſi le maine de lun ſolement done vn mortal plague done mort enſuiſt, ceo eſt murdre in touts que ſont preſent et de meſme le partie, coment que les auters ne entendant a doner plague ey mortall, come appiert in Mackallies caſe 9. part de mes Reports, fol. Mes in trñs vers deux ſi les Jurours trouont lun culpable a vn temps, & lauter al auter temps, la ſeuerall dammages poyent eſte taxe; mes ſi le pl̃ meſme confeſſe que ils commiterõt le trñs ſeueralment, la le briefe abatera: et iſſint diuerſitie inter trouer per verdit et confeſſion del partie. Vide 36.H.6. 27. in Maintenance, 2.H.7. 16.b. Auxi eſt difference inter expreſſe confeſſion, et nient dedire, 8.Hen.6.13. 10.E.4.8. 11. Hen.7. per Mordant. 8.H.5.5. 8.E.3.8.b. 17.E.3.43.a. 21.E.3. 13. 18.E.3.49.

Le 2. point reſolue.

¶ 2 Fuit reſolue, que in trñs vers deux ou lun vient et appiert &c. vers que le pl̃ count ſimul cum &c. que plead & eſt troue culpable per enqueſt aux damages, et puis lauter vient en plead & eſt troue culp. le defendant que plead darreinment ſerã charge oue les dammages taxe per le primer inqueſt, car l̃ trñs que le pl̃ ad fait ioynt per ſon briefe & count & fait a vn temps, ne poet eſte ſeuerre per les Jurors ſi les Jurors troue le trñs deſte fait per touts a vn meſm̃ temps come le pl̃ ad ſuppoſe. Encounter que fuit obiect que ceo poet eſte miſchieuous al defendant que darreinment plead, car exceſſiue damages per conſent enter l̃ pl̃ & le primer defendant poient eſte troue, oue q̃x le ij. def. ſerã charge et nauera aſcun remedy a releeuer luy meſme per Attaint, intant que il eſt mere ſtranger al iſſue ſur le triall de quel les dammages fuer̃ aſſeſſe. Mes fuit reſolue, que in tiel caſe il auera Attaint, car coment que il ſoit eſtranger al iſſue, vncore pur ceo que per la ley il eſt priuie in charge il auera Attaint;

et

& oue ẽ accord, 44. E. 3. fo. 7. adiudge in le point, & F.N.B. 107. a accord; Et in 44. E. 3. fol. 6. in treſpaſſe de Battery la eſt vn Maxime priſe, que in cheſcun caſe ou inqueſt eſt priſe per miſe des parties, per meſme lenqueſt ſerra les dammages taxes p touts: Vide Paſch. 9. Hen. 6. rot. 345. in communi bãco, Exoneratio Iuratorum de damnis aſſidendis in tranſgreſſione ſuper veredicto ſuo, eo quod priùs aſſeſſa fuer' per aliam Iurat verſos alios in le ſimul cum: Mes in Mich. 39. Henr. 6. fol. 1. in accoñ de treſpaſſe vers pluſors (queux ont plead in barre le darreine terme) et vn de eux fiſt default, le quel fuit record, la eſt reſolue per tout le Court, que pur ſauer dun diſcontinuance vn briefe denquirer de dammages ſerã agard, mes nul iſſuera pur ceo il ſerã contributory aux dammages taxes p Inqueſt al miſe de parties ſils troueront pur le pl, et ſilz troueront encounter le pl donques le briefe denquirer des dammages iſſueã; Et le reaſon que nul briefe iſſueã al primes denquirer des dammages tanques &c. eſt, pur ceo que ſi briefe iſſuer & damages troue, ceo neſt forſq; inqueſt de office & ne al miſe des ptes; et vncore enquiry (ſi ſerroit loyall) couſt ſerver pur touts les damages, car lenquirie de eux ne ſerã deux foits, et les auters queux ount plead al inqueſt, ſi liſſue ſoit troue vers eux, ſerã chargeable de ceux dammages queux ſont troue per lenqueſt de office, et ſi eux ſont exceſſiue ils naueront aſcun remedy et vncore nul default in eux, car Attaint ils ne poyent auer, quia forſque inqueſt doffice: mes in caſe quaunt in treſpaſſe vers deux ils pleadont de rien culpable ſeueralment, et ſeuerall Venire facias agarde, lenqueſt que primes paſſa aſſeſſera damages pur touts, et le ſecond inqueſt ne aſſeſſera dammages, mes il ſerã contributorie aux damages aſſeſſe per le primer, nient obſtant que il ne ſoit partie a ceo, & vncore ſi les damages ſoient exceſſiue il auera Attaint, & iſſint nul damage ou miſchiefe accruera a luy in tiel caſe: Vide 21. Ed. 3. 57. Et la in le dit liure in 39 Hen. 6. 1. Winſlade le prothonotary dit ad eſte common courſe ciens que tantoſt que vn ad fait default, p̃ agarder briefe denquirer de damages õs luy: A q̃ Priſot chiefe Iuſtice tũde, ceo neſt bien vſe. Et ſolonq; le dit de Winſlade in 19. H. 6. 8. bẽ de enquirer de damages fuit agard in tiel caſe, mes encont le ley come appiert deuant. Et ouſter in arreſt de iudgement fuit moue & alledge que la fuit vn diſcontinuance vers Ieffrey Cobbe, & le diſcontinuance

neſt

nest pas aid p lestatute de 32. Hen. 8. ne alcun auter statute, car le Judgement est done sur confession et nemy sur verdit: Auxy Jeffrey Cobbe nest pas partie al issue ou al inquest que assesse les dammages: Vide Mich. 1. & 2. Phil. & Mariæ, issue joyne ink le dōt & le voucher est hors del statute de 32. Hen. 8. cap. 30. et vncore il fuit partie al issue: Mes fuit resolue, que le dit act extend al case al barre, p ceo que Jefferey Cobbe fuit ptie al originall, et vn des defendants in laction, car le letter del statute de 32. Hen. 8. est, If any issue be tried by oath of twelue or more indifferent men for the plaintife, or defendant, or for the partie of the ten' or default, &c. issint que le voucher est hors de ceux parols, mes Jeffrey Cobbe in cest case est vn des defendaunts et issint deins les parols del act, & verdit in cest case est done, a que il est cy priuy q̄ il poit aū Attaint. Auxi fuit affirme p touts les Prothonotaries et issint resolue, que apres le briefe denquirer de dammages agarde la est nul continuance prise aps in le common Banke ink le pl̄ et le def. vers q̄ le briefe denquirie &c. est agard: mes fuit dit que autrement est le course in le Banke le Roy: Et issint fuit adiudge inter Tooly pl̄ et Preiston defendant, Mich. 29. & 30. Eliz. in common Banke & puis affirme in briefe de Error in cest Court del Banke le Roy: Mes sont diuers Presidents in cest Court, que en tiel case continuances auoyent estre prise, q̄ est vn sure voy, et abundans cautela non nocet. Et puis en le case al barre Judgement fuit done pur Sir John Heydon le pl̄ pur le 200. li. assesse &c. vers touts les defendāts: sur quel Judgement briefe de Error fuit port, et touts les dits points fuer̄ moue & debate arere al barre & al bench in banke le roy, & sur bone consideration le Judgement done deuant fuit p tout le court vnement affirme. Nota Lecteur in Mich. 28. & 29. Eliz. Reginæ, in banke le roy Rich. Gomersal port bre de Account vs J. Gomersal de diuz receipts & preels, a touts quix forsq; vn le def. plead al issues (& p vn preell plead riens) & les issues fuer̄ troue p le pl̄: et in arrest de iudgement fuit moue, que le plea fuit discontinue p c̄ q̄ il ne rūde al preel, come est agree in 7. E. 4. 24. & 7. H. 6. 5. &c. Et fuit obiect que cest discontinuance ne fuit remedy p lestatute de 32. H. 8. p ceo que nul rūs est done pur vn parcel, et de parcel le pl̄ ne poit auer Judgement solonq; son Count, car del parcel a q̄ nul rūs fuit fait nul Judgement poet estre done.

C 3. Mes

℔ 3. Mes fuit reſolue & iſſint aſſirme in le bank le Roy que leſtatute de 32. H. 8. extend a ceo, car per ceo eſt enact q̄ apres verdict troue Judgemẽt ſerr̄ done any diſcontinuance &c. notwithſtanding, & accord Judgemẽt fuit done de tant q̄ fuit troue p̄ le verdict. Vide Herlakindens caſe, in le 4. part de mes Reports, fol. 62. *Le 3. point reſolue.*

℔ 4. In le caſe al barre, intant que in Judgement del Ley le ſeuerall Juries donont vn verdict tout a vn tẽps, le pl̄ poet auer election dauer Judgemẽt de melioribus damnis per aſcun des inqueſts, & ceo liera touts, mes fiat niſi vnica executio. Vide Mich. 10. & 11. Eliz. Rot' 758. Hill. 17. Eli. Rot' 1042. lib. intrat fo. 589. ſect. 12. Mes in le caſe al barre in verity les greinder damages fuer̄ primerm̄t alleſſe. Vide 19. H. 6. 8. per Hody. *Le 4. point reſolue.*

℔ 5. Fuit reſolue, que ou in treſpas les defendaunts pleadont ſeuerall pleas touts triable per vn meſme Jurie, & ambideux les iſſues ſont troues pur le plaintife, les Jurors ne poient ſeuer les dammages, & ſils font, tout le verdict eſt vicious, come appiert Hillar' 43. Elizab. Rotulo 1694. in Communi banco inter Auſten plaintife & Willard & 2. autres defendants in batterie: vn pleade non culp. et les autres plead de ſon aſſault demeſne tout tryable per vn inqueſt, et ambideux les iſſues troue pur le plaintife, et ſeuerall dammages done vers eux, & male per totam Curiam. *Le 5. point reſolue.*

Et in ceſt caſe vn record fuit cite per que appiert que Edward Myles port treſpas (que commence in Banke le Roy 7. Iacobi Regis Rotulo 413.) vers Rich. Pyatt, Thom̄ Richardſon, et Nicholas Babbs, pur debruſer & entrie de ſon cloſe & meaſon al Nedeham Market, et pur priſel et aſporter dun Cubbord al value de xl. s. ouelque dits faits, euidences, et miniments in meſme le Cubbord containe, vn Copper al value de xl. s. vn Leade al value de v. l. et xl. yards de wainſcot al value de v. l. al dammage del dit Edward CC. l. Nicholas Babbs pleade non culp. generalment, Thom̄ Richardſon a tout le Treſpaſſe (except debruſer et entrie del Cloſe et Meaſon) pleade non culp. Rich. Pyatt a tout le Treſpas (except le debruſer et entrie del Cloſe & Meaſon, et priſel et aſporter del dit Cubbord et Leade) pleade non culpabl. Quant al debruſer del Cloſe et Meaſon, Richardſon dyt, et quant al debruſer del Cloſe et Meaſon, et le priſel et aſporter

dedits Cubbord et Lead, Platt dit actio non, et piedont in barr' in ſtatute Staple de 150.l. conus per Miles al Th. Platt, & que les dits meaſon & cloſe & les dits Copper et Lead inter alia fueront extend per force del dit ſtatute & per Liberate deliuer al dit Th. Platt, q̄ mozuſt poſſeſſe & inteſtate, & que ladminiſtrac̄ des biens & chattels del dit Tho. Platt fuit commit al dit Rich. Platt, p q̄ le dit Ric. Platt in ſon droit demeſne & Richardſon come ſon ſeruant ent in le dit cloſe et meaſon & priſt les dits Copper & Lead cōe les biens & chattels del dit Rich. Platt per reaſon del dit adminiſtrac̄. Miles reply, que nul tiel record del dit extent et Liberate remainant in le Chancery: Platt & Richardſon reioine q̄ eſt tiel record del extent & Liberate remainant in Chancery: Touts ceux pleas fuer enter in Mich. ann. 7. Iac. Reg. & iour adonqs fuit done pur aſſi le record apud Weſt. die Mercurij prox. poſt craſtin. Purification. beat' Mariæ ſuo periculo, & auxy Ven. fac' fuit adonqs agard p̄ trial dez ditz iſſues retournable ad pref. die. A quel iour Platt & Richardſon failer del record, ſur q̄ agard fuit que Miles recoueroit damages: & ſur ceo fuit adonqs agard Venire fac' tam ad triand' exitus pred. æuam ad inquirend' de damnis, returnabl' die Mercurij prox. poſt quinden. Paſch. & donqs eſt enter in tiel manner. Poſtea continuat' inde proceſſu inter partes pred. de predict' placito per Iur'am poſit' inde, inter eas in reſpect' cor̄ dn'o Rege apud Weſt. vſq; die Martis prox. poſt Octab. ſancti Mich. tunc prox. ſequen', Niſi Iuſtic' dn'i Regis ad Aſſiſas in com. predicto capiend' aſſign' prius die Martis 24. die Iulij apud Bury ſc'i Edmundi in com. pred. per form̄ ſtatuti &c. venerint pro defect' Iur' &c. A queux Aſſiſes touts les iſſues fuer troue p̄ Miles, & ſeueral damages aſſeſſe, cibien pur le trꝰ mile in iſſue et triable per patriam, come pur le trꝰ trie per le record, le quel verdit apres al iour in banke per totam Curiam fuit qualbe, pur ceo que les Jurors ont aſſeſſe les dits damages ſeueralment. Et quia Iuratores predict. male ſe geſſerunt in veredicto ſuo reddendo, Venire fac' de nouo fuit agard, et ſur 2. triall eux, touts iſſues fueront troue pur le plaintife, et entire damages aſſeſſe pur tout le treſpaſſe & coſts del ſuit in tout amountant al 115.l. et 12.d. Et in arreſt de Judgement fuit moue que ne fuit aſcun continuaunce a termino Paſchæ, anno 8. Iacobi Regis, vſque terminum Trinitat' donques inſuant, nec ab eodem termino vſque diem Martis proxime poſt Octabas Sancti Michaelis tunc proxime ſequentes:

et

et coment que la fuit pleine discontinuance en cest case, & coment que tissue de Nul tiel record nest pas deins lestatute de 32. H. 8. q parle del verdit de 12. ou more indifferent homes, uncore pur les reasons auant rehearse Judgemẽt fuit done pur le pl. Et puis brē de Error fuit port sur cest Judgemẽt, et le sole error assigne fuit le dit discontinuãce: Mes pur auters errors nient assigne, cõe fuit ouertũt parle in le argument in le case al barre, le Judgemẽt in le dit case de Wiles fuit reuers.

Mich. 10. Iacobi Regis.

Priddle & Nappers caſe.

IN Attachment ſur Prohibition in le common banke per John Priddle qui tam &c. vers Thomas Napper Gent Proprietar del Rectorie de Tintenhull, in Com Somerſ, et counta q̃ lou vn Robert Shirburne alias Whitlocke, nuper Prior del Priory ỏ S. Peter & Paule Apoſtles de Mountacute in le county de Somerſet ordinis Clunacenſis fuit ſeiſi de xxij. acres de terr̃ appel Perins hill alias Guilberts hill in Tintenhull in le dit County, et del Rectorie de Tintenhull eidem Prioratui pertin' & ſpectan', acparcell' eiſdem Priorat' exiſten' in ſon demeſne come de fee in droit del Priory, et que le dit Prior et touts ſes predeceſſors Priors del dit Priorie deuant le diſſolution del dit Priorie, et al temps del dit diſſolution del dit Priorie, fuer Rectores de Tintenhull auantdit, et auoyent et teignoier le Rectorie auantdit ſimul & ſemel oue les dits xxij. acres de terre in manibus ſuis proprijs in iure prioratus ſui predicti, ratione cuius idem nuper prior & omnes predict' alij priores ejuſdē nuper Prioratus per totum tempus predictum ante predictum tempus diſſolutionis Prioratus illius vſque ad tempus diſſolutionis &c. habuerunt & tenuerunt, ac idem nuper Prior tempore diſſolutionis &c. habuit & tenuit predictas viginti & duas acras terræ exonerat', acquietat', & immunes de omnibus & omnimodis decimis &c. et que 20. Martij anno 30. le dit Pryor et ſon Couent, per lour fait inrolle in le Chauncerie, done

done grant et ſurrender le dit Priory, le dit Rectory, terre, & touts les poſſeſſions de ceo al Roy H.8. ſes heires & ſucceſſors, & que per force de ceo & del ſtatute de 31. H.8 de diſſolutions le Roy H.8. fuit ſeiſi del dit Rectory & del dit terr in ſon demeſne come de fee come in droit de ſon Coronne, et mes le cauſe del ſtatute de 31. H.8 de diſcharge des payments de diſmes, p force de q̃ le Roy H.8. fuit ſeiſi des dits 22. acr de terre &c. diſcharge de payment des diſmes, & conuey lenheritance des dits 22. acres a Sir Thomas Freke et auters, queux anno 38. Eliz. demiſont al dit John Priddle pur 99. ans ſi 3. de ſes fits ou alcun de eux cy longemt viuera, & auerre les vies de eux, & q̃ le def. proprietarius rectoriæ prædictæ &c. deuant le eueſq̃ de Bath & Wels ſue le plaint pur diſmes de graines creſceants in 22. acres de terr &c. Et prædict' Thomas Napper pro conſultatione habenda, alledge grãt per les Letters patents le Roigne Eliz. anno regni ſui ſecundo, del dit Rectory a Riue & Euelyn et a lour heires, et per meane conueyance conuey le dit Rectorie al dyt Thomas Napper in fee, & que il libel pur les dits diſmes come bien a luy lyſt, Abſque hoc qd prædictus Prior & omnes prædeceſſor' ſui Priores p̃d nuper prioratus a tempore cuius contr' memoria hominum non extitit ante tẽpus diſſolutionis &c. necnon vſque ad tempus diſſolutionis &c. habuerunt & tenuerunt prædict' vigint' & duas acras terr' exoneratas, acquietat', & immunes de omnibus & omnimod' decimis quibuſcunq; ſuper prædict' vigint' & duas acras terr' quouiſmod. proueniẽt &c. prout &c. & hoc &c. vnde petit iudicium, et breue dicti domini Regis de conſultatione ſibi in hac parte concedi &c. Sur que iſſue fuit ioine, et le Jury deuant Juſtices de Niſi prius done vn ſpecial verdict: Que le Pryor & ſes predeceſſors temps dont &c. ieſque al temps del diſſolution fuer ſeiſie des dits 22. acres de terre in lour demeſne come de fee come in droit del dit Pryory: Et que vn Thomas iades Pryor del dit Pryory fuit ſeiſie del aduowſon del dyt Eſglife de Tintenhul en fee en droit de ſon Pryory: & il eſteaunt ent ſeiſie Hen. 8. le 8. iour de May lan de ſon raigne le 20. per ſes Letters patents, le exemplification del inrolment de que deſouth le graund Seale il monſtre auant, de gratia ſua ſpeciali ac certa ſcientia & mero motu ſuis licentiam dedit prefat' Thomæ tunc Priori nuper Prioratus, & eiuſdem loci Conuentui & ſucceſſoribus ſuis, quod ipſi & ſucceſſores ſui dictam Eccleſiam parochialem de Tintenhull prædicta, impropriare, conſolidare,

incorporare, annectere, & vnire, & eam sic appropriat', cõsolidat', incorporat', & vnitam, in propios suos vsus tenere possint, oue prouiso a indower vn Vicaridge, et q̃ vn competent annuel summe serra distribute aux poures, oue vsual non obstante: & que John Cueslꝫ de Bath & Wels ordinarie del dit lieu 4. Septembr̃, 1529. per Indentures tripartite, g. lun part seale oue le Seale del dit Cueslꝫ, lauter part enseale oue le Seale de Priorꝫ & Couent de Bath (que confirm le dit Indenture) et le tierce part enseale oue le Seale del Deane et Chapter de Wells (que auxy confirmont le dit Indenture) Ecclesiam parochialem de Tintenhul dict̃ nostr' diœcesis & sui Patronatus (vt asserunt) dictis Priori & Conuentui & successoribꝰ suis & domui siue Prioratui suo p̃d̃ cum consensu pariter & assensu metuendissimi in Christo principis & domini Henrici octaui Dei gratia &c. Authoritate nr'a ordinaria annectim⁹ appropriamus & vnim⁹ p̃ p̃sent', ita qd cedente vel decedent' rectore eiusdem Eccleſiæ parochialꝫ qui nunc est, seu aliter ipsa Ecclesia quouismodo vacari contigerit, liceat ipsis Priori & Conuentui suisque successoribus per se vel per aliũ seu alios ipsorũ nomine possessionem dict̃ Eccleſiæ parochialis authoritate propria intrare &c. & in proprios vsus conuertere & imperpetuum retinere, oue indowm̃t dun Vicaridge & prouision pur vn annuel summe aux poures: et puis le adonquez person del dit rectorꝫ morust, ap̃s q̃ mort le dit Thomas Priorꝫ del dit Priorꝫ in le dit rectorꝫ enter, et fuit cibñ del dit rectorie come des ditz 22. acres de terre seilie in son demesne come de fee in dñt del dit Priorꝫ, & puis le dit Priorꝫ Thomas morust, & luy succeed le dit Robert Priorꝫ, & q̃ l' dit Priorꝫ Thomas & Priorꝫ Robert touts tẽps puis le dit appropriatiõ teignont le dit rectorꝫ oue les dits 22. acres de terre in ses proper maines simul & semel in dñt de son Priorꝫ, et troue le surrender del dit Priorꝫ, Et q̃ le dit roy H.8.24. die Iulij anno 36.H.8 per Indenture desouth Seale del Court de Augmentatiõ, demise le dit rectorꝫ al William Petre Doctor del ley pur 21. ans, q̃ alligne ceo ouster al Edward Napper & q̃ nul dismes fuer̃ pay iesꝫ al 2. an de Roigne Mary, et donques le dyt Edward Napper ad sentence in le court del Audience vers vn Thomas Guil adonques fermor des dits 22. acres, et q̃ puis le dit sentence iesꝫ al 8. an del Roigne Eliz. dismes fuer̃ pay des dits 22. acres, & conuey le dit rectorꝫ del Roy H.8. per meane discents al Roigne Eliz. et per les dits letters patents et per diuers meane conueyances al Napper:

Et

Et vtrum ſuper tota materia &c. pred. Robertus nuper Prior & omnes predeceſſores ſui Priores eiuſd' a tempore cuius contr' &c. ante tempus diſſolutionis &c. necnon vſq; ad tempus diſſolutionis &c. habuerunt & tenuerunt p̄d 22. acras terr' exonerat', acquietat', & immunes de oīb⁹ & omnimodis decimis quibuſcunque &c. Iuratores penitus ignorant, & petunt aduiſamentū Curiæ in primiſſis, & ſi &c. Et ceſt caſe fuit ſouent foits argue al barre p̄ lez Seriants, & oze in m̄ ceſty time fuit argue al bench. Et in ceſt cas ceux points fuer̄ reſolue.

¶ Primerm̄t, q̄ le infozmation ſur q̄ le pzohibition fuit grant fuit ſufficient in matter, car com̄t q̄ chelcun Eſglíſe parochiel eſt ſuppoſe deſte pzeſentatiue, & lencumbent doit vener eins per admiſſion, inſtitution, & induction, vncoꝰ le pl' in ceſt caſe poet p̄ſcribe q̄ le Pzioz & ſes p̄deceſſoz⁹ tēps dont &c. auoient eſte rectoz⁹ del dit Eſglíſe, car ceo amount q̄ ceo fuit impzopziate &c. et le commencement de choſe fait deuant temps de memozy ne poet eſte conus, s. ou ceo deuient p vnion, ou impzopziatiō: & oue ceo accozd 21. E. 4. 65. a. ou in trñ⁹ de certaine charrets des auens pziſe a Bodman vers le Pzioz de Bodman, le def. dit q̄ les blees fuer̄ creſceants in certaine lieu in B. in le pariſh de B. de q̄l pariſh il eſt perſona imperſonata, i. incumbent, & fuit chaſe a m̄e com̄t il vient a m̄ le patronage, p q̄ il alledge title p pzeſcription, et com̄et les blees fuer̄ ſeueres des 9. parts, p q̄ il eux pziſt, et ceo fuit allow pur bone title al rectozie: p q̄ quant a ceſt point le infozmation fuit reſolue deſte bone: mes laddition de impzopziatiō &c. ad fait ceo ſans queſtion. Auxy fuit tenus, q̄ le concluſion del pzeſcipt̄ del vnitie, s. ratione cuius le Pzioz teignoit le dit terr̄ diſcharge de diſmes ne fuit fozmal, car in veritie p le vnity (cōe appeareꝰ aps) la tre ne fuit diſcharge des diſmes mes dez paiñt dez diſmes, et iſſint ſont les polz del ſtat de 31. H. 8. (cōe auxy ſerꝰ dit aps) mes vnc̄ cēble q̄ intant, q̄ le p̄ſcipt̄ m̄ eſt bñ alledge in ſubſtance, iſſint q̄ le foundation del pzohibition eſt bon, q̄ le miſpziſell del concluſion et conſequent ſur ceo ne ſerꝰ cauſe a granter conſultation.

¶ 2. Que le plea le def. por conſultatione habenda (car il eſt in manner vn actoz) fuit inſufficient, pur ceo q̄ il ad trauerſe choſe nient trauerſable, car le pzeſcription del vnitie duiſt aū eſte trauers, et nemy le concluſion, s. ratione cuius, et ceo pur diuers cauſes; lun, come in Logicke le concluſiō dun ſillogiſme ne poet eſte denie, mes le maior ou minor pzo-

poſition,

position, ilsint in ley que est le perfection de reason t̄ teigne: & pur ceo si in Præcipe vn plead q̄ le manor de Dale est auncient demesne, et le terre in dōe est parcel del mannor, & ilsint ancient demesne, le dōt ne poit dire q̄ le terr̄ in dōe nest pas auncient demesne, car ceo est le conclusion sur les 2. p̄cedent propositions, s. le 1. que le mannor est auncient demesne, le 2. que le terre in dōe est parcell del manor, car sequitur conclusio super præmiss. et pur ceo ne poet este deny, et oue ceo accord 41.E.3.22. 48.E.3.11. & mults autres liueres. Ilsint in le case al barre, le maior, ou est perpetuall vnity de rectory & terre deins ceo iesq; al dissolution &c. la le terre est discharge des dismes, mes icy ad este perpetuall vnity del Rectory de T. & 22. acres, ergo les 22. acres sont discharge de dismes, cest conclusion ne poet este deny: 2. ceo est non solement conclusion, mes conclusion del ley, & matter in ley ne serr̄ mise in issue deste trie per pays, car le rule est, Quod quisque norit, in hoc se exerceat, & pur ceo sicut ad quæstionem fact' non respondent Iudices, ita ad quæstionem Iuris non respōdent Iuratores: & si les Jurors empriser̄ sur eux le conus̄ del ley & troue lespeciall matter & mispriser̄ le ley, les Judges del ley doner̄ Judgement sur lespeciall matter solonq; la ley sans auer regard al conclusion des Jurors, q̄r ne doyent emprender sur eux iudgement de ley, & oue ceo accord Pl.Com. Amy Townshends case. Vide 5.Hen.7. Carewes case, 9.H.6.38. 13.H.7.22. &c. & Seignior Barkleys case, Pl. Com. 233. Iun plead done al Roy H.7. & aux heires males de son corps, virtute cuius il fuit seisi in fee, lauk confesse le done virtute cuius il fuit seisie in tayle, & nul trauers al virtute cuius, car conclusion est conclusion del ley.

¶ 3. Lissue nest bien ioine, 1. p̄ ceo que le matter del discharge est per reason del vnity que est p force del Statute de 31.Hen 8. et nemy per le common ley, et lissue est ioyne sur vn discharge per le common ley, cestascauoir, prescription in le Prior et les predecessors, a tener les dits 22. acres de terre discharge de dismes, quel est vn discharge per le common ley: 2. chescun issue doyt consist sur vn affirmative, et negative, et icy nest alcun affirmative, car ceo que vient apres le ratione cuius nest affirmative ou positiue alledge, mes come vn consequence sur le matter precedent, Vide 8.Hen.6.6. 36.Hen.6.15. 9.E.4.36. 6.Hen.7.5. et oue ceo accord le resolution des Judges in Leuesque de Canterburies case in le 2. part de mes Reports, fol. 48. ilsint que

icy

icy nest alcun issue ioine dalcun matt alledge in fait in l'information.

¶ 4. Sur le verdict diuers points fuer mone al barre: 1. si le dit appropriation (come ceo fuit troue) fuit bone ou nemy: 2. si ceo ne fuit bone per le common ley, si lestatute de 35. Elizab. Reginæ, cap. 3. ad supplie limperfection de ceo, ou nemy: 3. quant le Jurie troue matter sufficient a barrer le parson des disines, que ne fuit parcell de lour charge, ne deins lisiue, si saums regard de cest matter consultation serr̄ graunt: 4. si per le dit impropriation et vnitie cy petit temps deuant le dissolution, que ne poet este outer 9. ou 10. ans serr̄ tiel discharge des disines come est intend deins le statute de 31. H. 8.

Quant al primer fuit obiect, q̄ le dit impropriation fuit void pur 2. causes: primerment, pur ceo que le Roy ad fait licence dappropriatiō del dit Eglise de T. per verba de presenti tempore, ou appiert que al temps del licente fait la fuit vn incumbent adonques de ihe eglise, issint que nul appropriation poiet este fait in presenti, mes in futuro, per speciall parols, a prender effect puis le mort del present incumbēt, car sicome nul appropriation poet este fait dun Eglise q̄ est pleine dun incumbent mes in speciall maner a p̄nder effect puis le mort del incumbent, issint le licence le Roy (sans q̄ le appropriation ne poet este fait) doit este speciall auxy, ou autrim̄t le roy est deceiue in son graunt et per consequence lappropriation est voide, et que sans licence del roy nul appropriation poet est fait. Vide Sir William Ethinghams case in 17. E. 3. fol. 39. & Pl. Com. in Grendons case, fol. 495. b. Et que in tiel case lappropriation doit este fait in tyel speciall manner, appiert in le dit case de Grendon, & 8. Elizab. Dyer 244. Le 2. cause fuit, que lappropriation in le case al barre fuit fait a prender effect in possession, et nemy in tiel special maner puis le mort del incumbent come appiert deuant il doit per la ley.

¶ Mes fuit resolue, que lappropriation fuit sufficiēt in ley, car voyer est que le licence est generall, et pur ceo serra prise in tiel sence que il poet prender effect, & ceo est dest̄ appropriat̄ apres le mort del Incumbent: Et quaunt les Letters patents poiēt este prise a 2. intents bone, in mults cases ceo serr̄ prise a tiel intent qne est pluis beneficiall pur le Roy, mes si les Letters patēts poient este prise a vn intent bone, & a auter intent void, donqs p̄ le honor del Roy,

et

et pur le benefit del subiect, ceo serr̄ prise in tiel maner que le grant le Roy prendra effect, car ne fuit lintent le Roy a faire voide graunt, et oue ceo accord 21.E.4.44. et Roger Countee de Rutlands case, in le huict part de mes Reports, fol.5. quel est bone a veyer, & in le Seignior Staffords case in mesme le part, fol.77. & le case de lir Iohn Molyns in le 6. part de mes reports, 5.b. & seigniour Chandos case in mesme le part, fol.55. et le Countee de Cumberlands case in le 8. part de mes Reports, fol. 167. Et isslint fuit resolue in le principall case que le licence serr̄ prise a cest intent a faire appropriation a prender effect apres la mort del present incumbent, & eo potius pur ceo q̄ lez Letters patents fuer̄ ex certa scientia & mero motu, & oue ceo accord vn record in le liure Dentries, tit' quare imp. diuis. Appropriation, ou le licence dappropriation fuit general, et le appropriation puis le mort del incumbent in ceux parols volens & concedens vt cedente vel decedente ipsius Ecclesiæ tūc rectore quod predictus Abbas & Conuentus eiusdem Ecclesiæ corporalem possessionem apprehenderent, ac fructus prouent⁹ & obuentiones perciperent & libere haberent. Et vide in eodem libro tit' Droit 1. Quant al 2. cause, ceo est mispryse, car appiert per le instrument de Appropriation troue deins le record, q̄ ceo fuit per expres parols a prender effect apres le mort del adonques incumbent, ita quod cedente vel decedente rectore dictæ Ecclesiæ qui nunc est &c. Auter reason fuit add q̄ intant que touts foits le licence le Roy de appropriation est fait al corps spirituell a q̄ lesglise serr̄ appropriat, et nemy al euesqr &c. et pur ceo serr̄ presume q̄ ils voillont obteine r̄ in tiel forme q̄ a eux auaillera. Auxy le licence dappropriation est touts foits general et isslint sont touts les p̄dēts, car coment que le Rector soit in vie al temps del fesaunce del licence il poet mourir ou resigner &c. deuant lappropriation.

Quant al 2. point, admittant le dit appropriation vst este doide, fuit obiect q̄ le dit act de 35. Eliz. ad fait ceo bon, car per ceo est pruiew et declare, That all mannors, lands, tenements, and hereditaments, which at any time heretofore were the possessions of any Abbey, Monasterie, Priorie &c. which after the said fourth day of February, in the 27. yeare of H.8. were granted or conueied, or mentioned to be graunted or conueyed, in or by any Letters patents whatsoeuer, made by the said late King H.8. to any person &c. were and shall bee reputed, taken, and adiudged to haue beene lawfully, and perfectly in the actuall

and

aud real poſſeſſion of the ſaid late King, and of his heirs and ſucceſſors, at ſuch time as the ſame were granted by the ſaid late king. Et ou fuit rẽde per le Councel del pl̃, que le dit act de 35. Eliz. extende ſolemẽt aux Letters patents faits p̃ le roy H. 8. et les L̃es patents in le caſe al barre fuer̃ faits p̃ l̃ roigñ Eliz. et iſſint hors del dit act de 35. Eliz. fuit reſolue, que in verity le dit act de 35. Eliz. ne extend my a ceſt caſe, mes nemy pur le cauſe alledge per le counſel del pl̃, car coment que voyer eſt que Roigne Eliz. graunt le inheritaunce del dit Rectorie, uncore appiert per le ſpeciall verdict q̃ le Roy H. 8 per ſes Letters patents indent ad demiſe le dit Rectory al William Petre Doctor del ley pur 21. ans, et lact de 35. El. puruieu, That all manors, lands, tenements, and hereditaments, mentioned to bee graunted or conueied in or by any Letters patents whatſoeuer, made by King H.8. to any perſon or perſons, bodies politique or corporate, ſhalbe reputed, taken, and adiudged, to haue beene lawfully and perfectly in the actuall and reall poſſeſſion of the ſaid late king and his heires and ſucceſſors: in q̃l puruieu 4. choſes fuer̃ obſerue; 1. le fauourable penning de t̃, s. mentioned to be granted, coment q̃ in effect riens paſſa p̃ le grant; 2. le generalty des pols, p̃mer̃nt, concerñt la quality de les letters patents, s. in or by any Letters patents whatſoeuer, ſoit eux deſouth le grand Seale, le Eſchequer Seale, le Court Daugmentation Seale, le Duchie Seale ꝛc. ſecondẽt, concernant leſtate ou intereſt q̃ eſt mention a paſſer̃ p̃ les Letters patẽts, q̃ eſt layſe a large et ne reſtrain al aſcun in certain, et pur ceo ſi les Letters patẽts purport grant pur vie, ou pur ans, leſtatute ad cy graund operation quant al puruieu del act, come ſi les Letters patents aunt purport graunt de eſtate taile ou fee; 3. le generalty del puruieu car ceo nextend my ſolemẽt a faire le graunt bone, mes a veſter les manors, terres, tenements, et hereditam̃ts des iades Abbots ꝛc. in le actuel & reall poſſeſſion de le Roy H. 8. 4. et non ſolement in le Roy H. 8. mes a luy ſes heirs et ſucceſſors, iſſint que les terres ſer̃ cybien veſt in le roy ſes heires & ſucceſſors quant le Roy graunt la terre pur vie ou pur ans, come ou il granta in fee taile ou fee ſimple, & iſſint le puruieu extend a 3. auters caſes, 1. ou aſcums tiels terres, tenements, ou hereditaments, came to the handes or poſſeſſion of the ſaid late King Hen. 8. 2. or which were put in charge to or for his Highneſſe in his Court of Eſchequer, or any other Courts of his Maieſties reuenue, 3. or by any Auditor or other

other officer of the ſaid late King. Et in cheſcun de ceux caſes le purueu ad cy graund operation, come in caſes des Letters patents, quant al veſter tiels terres, tenements, ou hereditaments in le roy ſes heirs & ſucceſſors: mes vñ fuit reſolue, q̃ le dit act de 35. H.8. ne extendra my a ceſt caſe, car le purueu ad vn qualification ou reſtraint que nad eſte mẽtion deuant al barre, et ceo eſt que in les dyts 4. caſes tiels terres, tenements, et hereditaments ſhall be reputed, taken, and adiudged in the actuall and reall poſſeſſion of the ſaid late King, his heires and ſucceſſours, at ſuch time as the ſame did ſo come to his maieſties hands or poſſeſſiõ, or were ſo put in charge, or graunted or conueyed by the ſaid late King H.8. as aforeſaid (donques viẽt le qualification ou reſtraint) notwithſtanding, 1. any defect, want, or inſufficiency of or in any ſurrender, grant, or conueyance of the ſaid manors, lands, tenements, or hereditaments, or any part thereof, to the ſaid late King H.8. 2. or any other matter or cauſe whatſoeuer, by which his Highneſſe was or might haue beene intituled to the ſame: iſſint q̃ le ſcope et purpoſe del act fuit a veſter in le roy H.8. toutz les terres, tenements, et herdditaments que Labbots &c. auoient niẽt obſtant les defects au ãdits: mez ſi le dit appropriation fuit voide et ne fuit done al Roy per leſtatutes de Monaſteries, donques le Priour de Mountacute in le caſe al barre nauoit riens in le dit Rectory forſq̃ laduowſon ſolemẽt et ius præſentandi. Mes vncore le dit act de 35. Eliz. eſt de graund vſe et effect, car inſtant que leſtatute de 31. H.8. ne done al Roy aſcun Monaſteries, Priories, &c. mes ſolement que auoiẽt eſte ſurr̃, graunt al Roy &c. ou fuer̃ diſſolue, ou que ſerr̃ ſurrender, graunt, &c. ou diſſolue, ceſt act in les dits 4. caſes ad ſupplie le defect ou want dun ſurrender, graunt, ou conueyance, auxy dun inſufficient ſurr̃, graunt, ou conueyance, iſſint que ſoit la aſcun conueyance al roy ou nemy, & ſi aſcun ſoit coment q̃ ceo ſoit inſufficient, les dits terres, tenemẽts, et hereditaments ſont actuelment veſt in le Roy ſes hẽes & ſucceſſors: 2. ſi Labbot, Priour, &c. vſt eſtre diſſeiſie, ou in aſcun auter caſe ou vn Office, Scire fac. ſeiſure &c. fuit requiſite a veſter le poſſeſſion in le Roy, la les darreine parols, &, or any other matter or cauſe whatſoeuer, by which his Highneſſe was or might haue been intituled to the ſame, ſupply touts tielz meanes per queux le Roy puit loialment auer eſte intitle et miſe in actuel poſſeſſion. Vide 33. Hen. 8. Brooke tit. Choſe in action 14 le queſtion la fait ou Labbot &c. fuit diſſeiſie, bien

explane

explane & resolue. Mes coment que soit defect in le appro-priation, uncor̄ (si l' rectory soit in reputation appropriate, & illint ad ēe use) c̄ est done al Roy p lestatute de 27. H. 8. ou 31. H. 8. & p̄ c̄ in 19. Eliz. in le Deane de Paules case fuit ad-iudge in le banke le Roy, que un Chauntery ou Colledge in reputation & nemy in ley fuit done al Roy E. 6. p lestatute ō 1. E. 6. deins ceux pols, All and all maner of Chaunteries, Colledges, &c. 27. Iunij an. 29. Eliz. in Cancellar', sur aide prier del Roy p le course del cōmon ley, le case fuit inter le Seignior Saint John pl' & Dean & Chapt' de Gloc̄ def. p̄ le plonage impropriate de Penmarke in le County de Glamorgan, p̄ c̄ q̄ le patron (q̄ deuant lappropriation ad graunt laduowson al corps Ecclesiastical a q̄ l' appropriation fuit fait) in an. 18 R. 2. fuit forsq; ten̄ in taile, & unc̄ c̄ touts foits cōtinue cōe es-glise appropriat, fuit resolue p Sir Thomas Bromley Sr̄ Chauncelor Dengliter, Guilbert Gerrard Master des Rolls, Shute & Windham Justices (q̄x le Sr̄ Chancelor in cē case associate a luy) q̄ cest rectory in reputation fuit done al Roy p lestatut ō Monasteries. Auc̄ case fuit Tr' 30. Eli. in camera Scaccar' Int' T. Grimes & H. Smith, pur le plonage de Bul-benham in le countie de Leic̄, q̄ an. 22. E. 4. fuit appropriat al Abbot de Sulby, & nul vicar indowe la &c. solōq; le purview des acts de 4. H. 4. c. 12. & 15. R. 2. c. 6. Mes la auoit un vicar in reputation continue & le rectory cōe appropriate cōtinue auxi & fuit resolue q̄ cest rectory fuit done al roy p lestatue de Monasteries. Hill' 4. Iac. Reg. in Cancellaria inter Bedel & Beare p̄ lesgl' de Kumbaltō, q̄ fuit appropriate in ann. 40. E. 3. & le defect fuit, q̄ Humfrey de Bohun County de Hereford (q̄ granta laduowson del dit eglise al corps Ecclesiastical a q̄ lappropriation fuit fait) fuit forsq; ten̄ in taile, & resolue cle-rement q̄ c̄ fuit don al roy H. 8. p lestatut ō monasteries. Nota Lecteur in lestatut de monasteries la est un sauing ō droits &c. mes lez foūdors, donors, &c. sont except hors del sauing: illint ils sont lies p le corps del act.

¶ Quant al 3. point sur le verdit, fuit resolue, q̄ intant q̄ lespecial matt̄ troue p le Jury ne fuit peel de lour charge ne ptinent al issue (admittāt q̄ lespecial matt̄ ad ēe sufficiēt dali barr̄ le pl' des dismes) ne serr̄ regard, car le ptie grieue p ceo ne poit aū attaint, ne lez testmoignes puny p̄ piury p lesta-tut de 5. Eli. p̄ ceo q̄ le dissent des Jurors ne l' testimony des testmoignes ne fuit matial al issue; illint q̄ intāt q̄ lissue est ioine sur p̄scriptiō in l' prior & ses p̄decessors a tener les ditz

22. acres discharge des disines temps dont &c. ils ne poiēt donet̄ in euidence vnity del rectory et terre p̄ 10. ans solement, que si ascun colour serī que ceo serī discharge, ceo nest pas discharge per prescription de temps dont al cōmon ley, mes per lestatute de 31. H.8. Jssint q̄ p̄ le insufficiency et impertinency des poynts & parts del cest plixe record, les auts Justices ne plont my al 4. point del ẏdict: Mes le chiefe Justice (p̄ le melieur direction in cest & auters tiels cases) declare coīt le dit point ad estē resolue deuaunt, et le causes et reasons del resolution ō ceo. Fuit longe temps in touts les Courts al Westm̄ graund question sur le dit branch del statute de 31. H.8. et le cause del doubt de ceo estoit sur ij. considerations: 1. sur consideration del nature et qualitie des Disines deuant le dit act: 2. sur les pols et puruieu del dit branch ō 31. H.8 Et quant al prim̄, quota pars, i. decima pars, q̄l nous appel disme, est Ecclesiastical inheritāce, collaterall al estate del fre, & ō lour pper nature due tantsolem̄t al Ecclesiasticall pson p le Ecclesiastical ley, et p̄ ceo nul vnitie de possess. poit ou extinct ou suspend ceo, mes q̄ ils nient obstāt ascī vnity remaine in elle, issint q̄ ilz poiēt ẽe demise ou grant al ascun spirituell home nient obstant ascun tiel suspition. Disines sont pluẓ collateral al fre q̄ vn garren q̄ lowner del fre ad deins ceo, car p feoffem̄t del fre sans sauer de garren le garren est extinct, come ē tenꝰ in 35. H.6. 56 mes si prior, q̄ ad vn plonage impropriat, infeoffe vn del pt del glebe, vncō il auera disines enconter son feoffement demeine, come est tenus in 42. E.3. 13. a. Et ne sont semble a vn Leet, & vnē si l' Sūr del Leet purchase fre deins ceo, s̄ Leet nest suspēd, ne (sil fait feoffem̄t del dit fre) son Leet in ē est extinct, come est tenꝰ in 7. Ed. 2. tit. Auowry 211. & 8. E. 2. ibid. 212. mes il ad inheritance per le common ley in le Leet, que est discendible et que il poet graunt ouster a que il pleist. Mes tiel inheritance lay home ne poet auera in disines al common ley, ne ceo pallera per tielx parolz cōe tempore l posslessions passet̄, et p̄ ceo Mich. 31. & 32. Eliz. in Prohibition inter John Parkins, & Thomas Hinde parson ō Babington in le Coūtie de Somerset, le case fuit, que le dit parson per fait indent lessa son glebe cum proficuis & commoditatibus eidem spectantibus pur 95. ans, rendant rent pro omnibus exactionibus & demandis quibuscunque dictæ Rectoriæ pro clauso prædicto spectan', et le question fuit si le lessee auera le dit close discharge des disines durant le terme: & fuit resolue per totam curiam,

curiam q̃ les diſmes ne paſſerõt p̃ tielz general polz, & come ils ſont diſmes nient ſeuek, ilz ſont mere Eccleſiaſticall pur ſubtraction de queux nul remedy giſt p̃ le cõmon ley. Si p̃ſon pchaſe t̃re deins ſon rectozy, & leſſa le rectozy, le leſſee auera diſmez del t̃re purchaſe, et oue ceo accozd 30. H.8. Dyer 43. vide 32. Hen. 8. Brooke tit. Diſmes. Donques, intant que ſi diſmes ſoient conſider de eux meſme deuant le ſeuerance de eux, ilz ſont mere Eccleſiaſticall, & cy collaterall al eſtate de t̃re q̃ nul vnitie poit eux extincter ou ſuſpender, mes nient obſtant aſcun vnity ils remainõt in eſſe, oze les pols del act ſont deſte conſider, queux ſont, That as wel the King, his heires and ſucceſſors, as all and euery ſuch perſon & perſons their heires and aſſignes, which haue or hereafter ſhall haue any Monaſteries, Parſonages appropriate, or other hereditaments &c. ſhall haue, hold, retaine, keep, and enioy as wel the ſaid parſonages appropriate &c. meſes, lands, tenements, and other hereditaments &c. diſcharged and acquited of payment of tithes, as freely & in as large and ample maner, as the ſaid late Abbots, Priors &c. had, held, occupied, poſſeſſed, vſed, retained or inioyned the ſame at the dayes of their diſſolution: et ſur ceux parols, intant que lunitie ne diſcharge ne ſuſpend les diſmes mes que ils fuek in eſſe al temps del diſſolution; & intaunt auxi que ceux parolz (diſcharge & acquite) impliont actuel immunitie & freedome, et q̃ le Roy & les patentees naueront eux diſcharge & acquite abſolutement, mes ſub modo, ceſtaſcauoir, in as large and ample maner &c. as the ſaid late Abbots &c. et les iades Abbots ne teignont les dits terres in caſe de vnitie diſcharge, mes charge oue le payment de eux; a ceux cauſes briefement fuit doubt, ſi le dit act extendera al caſe del perpetuell vnitie: & fuit auxi vrge, que ſi le dit act de 31. H.8. in caſe de perpetuel vnity diſchargera in reſpect de ceo le t̃re des diſmes, ceo ſerra tozt: & come eſt dit in Pl. Com. in le Countee de Leic' caſe. 398 le Parliament eſt Court de treſgrand honoz & Juſtice de que nul doit imaginer diſhonozable choſe, & le Doctor & Student fol. 164. ca. 55. ne poit ẽe intend q̃ vn ſtatute q̃ eſt fait per authozity de tout le Realme, cibien del roy & des Seigniozs ſpirituel & tẽpozal, come õ toutz lez cõmons, ſerr̃ aſcũ choſe enconr̃ verity &c. et Forteſcue cap. 18. Prudentiâ etiam & & ſapientiâ neceſſariò ſtatuta huius regni referta putandũ eſt, dum non vnius aut centum ſolùm conſultorũ virorum ſed pluſquam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipſa ſunt edita.

Priddle & Nappers caſe.

¶ Mes al darreine ſur graund conſideration fuit reſolue & adiudge, que perpetuell vnity temps dont &c. ieſque al diſſolution, ſerr̄ prima facie diſcharge del terre de paymēt des Diſmes p force del dit brauncb de 31. H. 8. pur diuers cauſes: 1. Leſtatute ne dit diſcharge des diſmes, mes diſcharge de payment de Diſmes, et diuers aut̄s reaſons; le principall de queux fuit, pur le infinite impoſſibilitie et impoſſible infinitenes, iſſint q̄ tiels immunities et diſcharges q̄ux religious meaſons auoient deuant temps de memorie ne poyent eſte conus: et expreſſement fuit reſolue, q̄ generall allegation del vnitie al temps del diſſolution &c. ſaums auerment q̄ ceo fuit perpetuell, ne fuit ſufficient: & coment que il auoit eſte perpetuell vnitie, vncore ſi les fermors des frres de le rectory ount payes diſmes deuant le diſſolution, donques le intendement & preſumption del ley ſur le perpetuel vnitie fault, et tout ceo poies veier in Larcheueſque de Canterburies Caſe in le 2. part de mes Reports, et diuers iudgements & reſolutions la cite fo. 48. & 49. Iſſint que tiel vnitie que eſt deins le dit brauncbe del act de 31. Hen. 8. doit auer 4. qualities: 1. Talis vnitas couent eſtre iuſta, droiturel et nemy p tort. 2. Doit ẽe æqualis, g. fee in lũ & lauf̄: car ſi les abbots priors, &c. ount tenus p leaſſe temps dont &c. ceo neſt vnity deins leſtatute, 3. Doit eſte perpetua temps dont memorie ne court &c. 4. Doit eſte libera, free de payment daſcun diſmes: car ſi lour fermors a volunt pur ans &c. ount pay diſmes a eux (come ad eſte dit) le vnitie perpetuell ne ſeuera. Mes fuit demand, quid ſi le appropriation fuit fait in tẽps le Royes E. 4. H. 6. H. 4. R. 2. E. 3. &c. & vncore in ley deins tẽps de memory, & vnity ad continue del temps del appropriation ieſque al diſſolution, & diſmes ne vnques fuer̄ pay neque p les Abbots &c. ou lour fermors, ne extender̄ my leſtatute a ceux cauſes? & fuit rũde, que non, ſur le point de vnity, car ſil voille prender le aide del act de 31. H. 8. le vnitie come ad eſte dit doit ẽe perpetuell: Mes in tiel caſe il poit alledge le dit brauncb del act de 31. Hen. 8. concernaunt le diſcharge del payment des Diſmes &c. et que les Abbots &c. temps dont &c. ieſq; al diſſolution ount tenus le frre diſcharge de Diſmes (come il bñ poet preſcriber per le cõmon ley) & done tiel euidence que il poit approuer ceo fet iſſint ſi in veritie le terre ſoit diſcharge, il ad aſſets bone remedie a relieuer luy meſme. Vide Leueſque de Wincheſters caſe in le 2. part de mes Reports fol. 44. 45. Mes ſi labby ou Priory &c. fuit foundue

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deins temps d memory, donqs il ne poit preſcriber omninò: & intant q̄ in le principall caſe lappropriation fuit fait in 20. H.8. iſſint q̄ appiert al Court, q̄ devant ceo les xx. acres fuer charge oue diſmes, car de common dꝛoit touts tres doient payer diſmes, a ceſt cauſe le chiefe Iuſtice conclude, que les dits xx. acres fuer (come ceſt caſe eſt) chargeable oue diſmes. Mes ſi les parties ne ſont ſatiſfie oue ceo ilz poient commencer arere, car intant q̄ linformation come eſt reſolue eſt bone, et le plea pro conſultatione habenda tout inſufficient, & le verdit impertinent al iſſue, ils ne voillent graunter conſultation, Et a ceo accord tout le Court.

Mich. 11. Iacobi Regis, que eſt enter in communi bonco, *Paſchæ* 11. Iacobi *Regis, Rotulo* 2559.

Doctor Grants caſe.

LE caſe fuit, que Gabriel Graunt Doctor de Diuinitie, Parſon del Pariſh de S Leonard in Foſter lane intra præcinctum Sancti Martini le graund, libell in Court Chriſtian deuant Doctor Maſter, official de Deane & Chapter de Weſtminſter vers Edward Taylor fermor dun graund et auncient meſe appell le Deanes houſe deins le precinct de Saint Martins le grand iades parcell des poſſeſſions del Abbot de Weſtminſter, et alledge q̄ cheſcun parochian ou inhabitant ayant ou occupiant vn manſion meaſe, ſhops, warehouſes, cellars, ou ſtables, deins le dit pariſh de Saint Leonard deins Saint Martine le grand, annuelment cheſcun quarter del anne al feaſts de Paſche, Natiuitie de S. John Baptiſt, S. Michael Larchangel, & Natiuitie de Chriſte, de temps dont &c. ou al moyns del foundation, dotation, et erect̄ del dit rectory de Saint Leonard, per equall portions, aux Parſons del dit Rectorie pur le temps eſteant, Nomine & loco decimarum ſuarum, iuxta ratam cuiuſlibet viginti ſolidat' redditus per annum, ex qualibet huiuſmodi

modi domõ, shopa, sollar', cellar', siue stabulo sic tenẽ siue occupat' in prædicta parochia, duos solidos legalis monetæ Angliæ, & q̃ le dit Edw. Taylor & son family demurre in le dit mese per 3. ans, et auxit & possesse ceo per mesme le temps sub annuali reddit' sex decim librarum seu saltem 12. libr. am &c. et illint demand' iij. s. in le liure &c. Le dit Edward Taylor exhibite information & suggestion al Court, que le darreine Abbot de Westminster et touts ses predecessors iesque al dissolution del dit Monastery, que fuit Anno 30. H. 8. ount tenus le dit mese discharge des dismes, & alledge le statute de 31. H. 8. cõcernant le discharge del payñt des dismes, et cõuey a luy m̃ lease pur ans, et sur ceo ad prohibition, a que le dit Doctor Grant appiert, & Taylor count vers luy al effect auauntd̃: et Doctor Graunt trauers le dit prescription del discharge des dismes, sur que issue fuit ioyne & trye deuant moy in Londres pur Doctor Graunt. Et ore fuit moue per le Councel de Taylor que sur le dit libel nul consultation doit ẽe grant, car de cõmuni iure nul dismes doiẽt ẽe pay p̃ meses del habitation, ne pur ascun rent reserue sur demise fait de eux; car dismes doient este pay des choses que crescont et renuont de anne in anne per iact de dieu: Vide le Registr' 54. b. F.N.B. 53. tit. Disme b. 16. et nemy p̃ habitation in meses, ou des rents issuants hors des trẽs, reserue & create solemẽt et mereñt p̃ iact del ptie. Et p̃ c̃ in le Citie de Londres les plons oñt ij. s. viij. d̃. in le liure &c. in nosme de dismes, mes c̃ est p̃ decree fait Ann. dom. 1535. et que est enact & cõfirme p̃ Authoritie de Parliament, Ann. 37. H. 8. ca. 12. Mes Saint Martins le grãd nest pas include deins l' dit decree & act, car c̃ est deins Londres, & nemy de ceo, et p̃ ceo remain al common ley: Et in 30. E. 3. fo. 1. a. & 38. E. 3. fo. 13. p̃ Finchdẽ est dit, q̃ les profits del esglise in Lõdres sont les oblations & obuentions.

¶ Mes fuit resolue per totam curiam, que consultation serr̃ graunt, car ceo poet auer loyal commencement, car poet este que pur touts les dismes del xx̃ sur quel les meses sont edifie, cest modus decimandi ad ẽe de temps dont &c. paye: & coment q̃ ceo soit edifie puis, ceo ne tollera le dr̃t del parson in cest case, & intant que poit auer loiall commencement, & que ceo ad ẽe vse de temps dont &c. a cest cause fuit resolue que consultation serr̃ graunt,

¶ Fuit auxy resolue, que pur ceux deniers il poit suer in Court

Doctor Graunts caſe.

Court xpien, pur ceo que ils ſont in nature de diſmes, ceſtaſcauoir, modus decimandi. Et cheſcun auncient Citie & Bozough ad pur le pluis part tiel cuſtome de modo decimandi pur lour meſes pur le maintenance de lour Parſon. Et quant al opinions in 30.E.3. & 38.E.3 fuit dit, que obuentio dicitur ab obueniendo, & include oblations, rents, ou auter reuenues: que bien poit accozder que le reſtitution deuant. Et puis conſultation fuit grant.

Mich.

Mich. 10. Iacobi Regis.

Sir Henry Neuils caſe.

PAſchæ 9. Iacobi Regis Rot. 925. **in ſecond deliuerance inter Alexãder Goodcrome pl' & Henry Mooze def. in le cõmõ banck, ſur le pzolixe et intricate recozd, le caſe briefement fuit tiel. Sir Henry Neuill Chkr fuit ſeiſie del mannoz de Wargraue, que ſoy extend in Warkeild & diuers autz villes, in ſon demeſne come de fee, dõt vn meſe, vn vierge de terre, & 18. acres de terre fuer pcell, Et Alexander Goodcrome alledge vn cuſtome in ceſt mannoz,** viz. quòd infra prædictum manerium de Wardagraue eſt & à tempore cuius contrar' memoria hominum non exiſtit, fuit vnum maneriũ cuſtumar', s. manerium de Warfeild, quod quidem manerium de Warfeild per totum idem tempus conſiſtebat de terris dominicalibus & ſeruicijs cuſtumarijs, viz. de prædict' meſuagio & virgata terræ, & de 18. acr' terr', ac omnibus reddittibus & alijs pertin' cuſtumar' in Warfeild, eidem manerio cuſtumar' pertin': quodque prædicto tempore quo &c. necnõ à toto tempore cuius contrar' &c. diuerſæ parcellæ præd' meſuagij, & virgat' terræ præd', & de præd' 18. acris terræ, fuer' terræ cuſtumar' eiuſdem manerij de Warfeild, & di miſſ. & dimiſſibil' per copiã Rot' cur' eiuſdẽ manerij de Warfeild per dom. eiuſdem manerij, vel per ſeneſchallũ domini eiuſdẽ manerij pro tempore exiſten', diuerſis perſonis ea capere volenti ſeu volentibus in feodo ſimplici, ad terminum vitæ, vel annorum, ad voluntatem domini ſecundum conſuetudinem eiuſdem manerij &c. Quod quidem manerium de Warfeild eſt, & à toto tempore ſupradicto fuit parcell præd' manerij de Wargraue tent' de eodem

eodem manerio de Wargraue per copiam Rotulorũ curiæ eiuſdem Manerij de Wargraue, ac dimiſſ. & dimiſſibil' per Copiam Rotulorum curiæ eiuſdem Manerij de Wargraue, per Dominum eiuſdem Manerij vel per Seneſchallũ ſuum eiuſdem Manerij pro tempore exiſten', cuicunque perſonæ ſiue perſonis ill' capere volẽti vel volentibus, in feodo ſimplici, ad terminũ vitæ, vel annorum, ad voluntatẽ domini ſecundum conſuetudinem eiuſdem Manerij de Wargraue, per nomen vnius meſuagij & vnius virgatæ terræ & 18. acr' terræ, & omnium reddituum & aliorum pertin' in Warfeild: **Et Sir Henry Neuill al Court de ſon mannor de Wargraue** Anno 28. Eliz. **grant al Robert Albany le manor de Warfeild** per nomen vnius meſuagij, vnius virgatæ terr', & 18 acr' terræ, & omnium reddituum & aliorum pertin' in Warfeild, **a auer & tener al dit Robert Albany & ſes heires al voluntꝫ del Seignior del dit mannor de Wargraue, ſolonque le cuſtõs de meſne le mannor:** Et idem Alexander vlterius dicit, quod infra prædictum manerium de Wargraue talis habetur, & à toto tempore cuius contrarij memoria hominum non exiſtit habebatur, conſuetudo, quod quilibet dominus cuſtumar' dicti Manerij de Warfeild, per ſeneſchallum ſuum vſus fuit & cõſueuit tenere cur' infra dictum maneriũ de Warfeild, pro & concernen' cuſtumarios tenentes ſuos prædicti Manerij de Warfeild præd' diuerſarum percellarũ terræ per copiã rot' cur' eiuſdẽ Manerij, dimiſſibil' ſecundum conſuetudinem eiuſdem Manerij de Warfeild, vt prefertur, quòdque præd' 2. acr' terræ cũ pertinen' in quibus &c. **ſont & de temps dont &c. fuer parcell del dit cuſtumary mannor de Warfeild**, & dimiſſ. & dimiſſibil' &c. **Et le dit Goodcrome claime per grant per copie des dits ij. acres fait per le Steward del Seignior del dit cuſtumarie mannor de Warfeild: Et iſſue fuit prīſe, le quel** infra prædictũ Manerium de Wargraue eſt & à toto tempore &c. fuit vnum Maner' cuſtumar', viz. Manerium de Warfeild, dimiſſ. & dimiſſibil' per Copiam Rot. cur' præd' Manerij de Wargraue, prout &c. **et le viſne fuit** de vicineto Manerij de Wargraue. **Et le trial fuit al barre, & liſſue fuit troue pur Goodcrome le pl', ceſtaſcauoir, que la fuit vn tiel cuſtumarie mannor. Et in arreſt de Judgement fuit moue, que vn tiel cuſtumary mannor ne poet ẽe in ley, car dun Copihold (que neſt que tenure a voluntꝫ) ne poet eſte Seignior, meſne, & teñ, mes de franktenement al common ley ſolement.**

¶ **Mes fuit clerement reſolue** per totam curiam, **que cuſtumary mannor poet ẽe tenus per copie, et tiel cuſtumarie**

Seig-

Seignior poet tener Courts & grant copies, & tiel customary mannor passer per surrender et admittance, & fines sert pay sur admittance, cibn sur alienation come sur discent: Et poet ee Seignior customary, mesne, et customary ten, cibie in case ou le mesnaltie est tenancy a volunt solonq le custom del mannor, come ou la est tenancy a volunt al common ley dun mannor: Et si tiel customary mann soit forfeit, le Snr auera les customes & seruices a ceo appertenant, come si tenant a volunt dun manor grant copies & reserue rents & seruices ceux rents & seruices sont annex al mannor & attendra sur own del mannor aps le volunt determine, coment que le Seignior del mannor ne claime per ou desouth eins p desins luy & sans ascun priuity in estate: Issint in case de cesty q est ten p vie ou p ans dun mannor, les rents & seruices reserue p eux alera a ceux in reuersion. Et issint nota diuersitie inter reseruations al common ley & per le custoe del manor. Et puis bre de Error fuit port & mesme le matt assigne p error, ql fuit clerement ouerrule p tout l Court in Banke le roy: & exception auxi fuit prise al visne, que sert auxi d Warfeild, sed non allocatur, car lissue fuit sur le custome deins le mann d Wargraue, & appiert q les tenants in Warfeild sont pcel del mannor de Wargraue: & sur c le Judgemt fuit affirme. Et fuit dit q le mannor de Aileham in le County de Norff. est tenus p copie, & auters in diuers auters lieus &c.

Hill.

Hill. 11. Iacobi Regis.

Doctor Ayrays caſe.

IOhn Alcocke gen̄ port action de trēſp vs Henry Ayray Doctor de Diuinitie, William witham, William Parſons, & Thomas Prieſt (q̄l plea commence in Banke le Roy Trin. 9. Iac. Regis Rot. 413.) et count dun trēſp 1. Martij. ann. 8. Regis Iacobi in vn meſe del pl̄ appell le Parſonage houſe, et les cloſes del pl̄, cestaſtraubit, vn appell le Parſonage cloſe, et auter conteine 10. acres de glebe terre, al Charleton ſuper Otemore in the Countie de Oxon̄: Les defend̄ plead non culp. et vn ſpeciall verdit fuit done a ceſt effect, que les lieus in queux &c. fuer̄ parcel del glebe del Rectorie del Charleton ſuper Otemore, dont le dit Henry Ayray al temps de trēſp &c. fuit & vncore eſt parſon, & q̄ le Roy E. 3. 18. Ian. Ian de ſon roigne le 14. per ſes letters patents deſouth le grand ſeale, Ad honorē Dei & augmentationē cultus Diuini, de gratia ſua ſpeciali conceſſit & licentiā dedit Roberto de Egleſfield clerico ipſi⁹ nuper regis, quòd ipſe in quodam meſuagio ſuo cum pertin' in Oxon' in parochia ſancti Petri in oriente, quādam Aulam Collegialem de ſcholaribus, capellanis, & alijs, perpetuis temporibus duratur', ſub nomine Aulæ ſcholarium Reginæ de Oxon' quæ per vnū præpoſitum de dictis ſcholaribus iuxta ordinationē præfati Roberti inde faciend' gubernabitur, conſtruere & de nouo fundare, ac meſuagium illud cum pertin' præfatis Præpoſito & Scholaribus dare poſſit & aſſignare, Habendū & tenendū ſibi & ſucceſſoribus

ſororibus ſuis Præpoſitis & ſcholaribus Aulæ illius pro eorũ inhabitatione imperpetuum: Et eiſdem præpoſito & ſcholaribus, quod ipſi meſuagium predictum a prefato Roberto recipere poſſint & tenere ſibi & ſucceſſoribus ſuis prædictis, ſicut prædictum eſt, tenore præſentium licentiam ſimiliter dedimus ſpecialem. Et memoratam Aulam cum Præpoſito & cæteris ſocijs per electionem in futurum habitantibus & morantibus in eadẽ, quos ad verum Collegium erigimus & exiſtere extunc præponimus, & vt Collegium licitum & approbatum agnoſcim⁹, authoritate noſtra plena qua poſſumus, acceptamus, ratificam⁹, & confirmam⁹: ſtatut' de terris & tenementis ad manum mortuã non ponendis edit', aut quocunque alio ſtatuto vel ordinatione in contrarium factũ non obſtante. Nolentes quod prædictus Robertus vel hæredes ſui, ſeu præfatus Præpoſitus & ſcholares aut ſucceſſores ſui ratione præmiſſorum &c. occaſionentur, moleſtentur in aliquo, ſeu grauentur &c. **Ouſter ils trouont, que le Roy James que ore eſt,** 11. Octobr. anno 8. **de ſon raigne ad exemplifie deſouth le graund Seale le dit Charter in les Records del Chauncerie in le Tower de Londres enroll, et in le exemplification le clauſe de** ſub nomine **fuit** ſub nomine Aulæ Reginæ de Oxon', **ou in verity le Charter fuit,** ſub nomine Aulæ ſcholarium Reginæ, **iſſint que ceſt parol** (ſcholarium) **fuit in cẽ clauſe omitte: Et trouõt ouſter, que le dit Robert de Egleſfield** poſtea virtute licentiæ predictæ fundauit Collegium predict' in Oxon' predict', & condidit diuerſas leges & ſtatuta pro regimine Collegij predicti & ſcholariũ in eo allocat' & allocand', prout patet ex rotulo patentium de anno 1. Regis Rich. 2. Iuratoribus predictis in euidenc' oſtenſ. **le tenor de que eſt enit in le ſpeciall verdit** in hæc verba: **Per que appiert, que le dit Robert de Egleſfield per ſon Charter nominate le dit Colledge** Aula Reginæ æternaliter nominand', & ſcholares **auxy il nominate in ceo in diuers lieus** ſocij, **et per meſme le fayt conſtitute diuers Ordinances et Statutes pur le melieur gouernment del dit Colledge: Et les Jurors trouont ouſter, que le Roy Hen.** 8. **fuit ſeiſie del auowſon del Egliſe de Charleton** ſuper Otemore predict' **in fee in droit de ſon Corone,** & 4. Iulij anno 35. regni ſui, **per ſon Charter deſouth ſon graunde Seale, graunta le dit aduowſon al Richard Andrewes et Nicholas Temple et a lour heirs, queux per lour fait** 8. Iulij 35. **graunt le dit aduowſon al William Deueniſhe & Francis Shawe, et lour heires, et que** 8.

Doctor Ayraies caſe.

Iulij 1509. quidam Hugo Hodgeſon tunc præpoſitus Aulæ p̄d & ſcholares eiuſdem Aulæ, per nomina Hugonis præpoſit' collegij Reginæ in vniuerſitat' Oxoniæ & ſociorum & ſcholariū eiuſdem Collegij, **per lour fait deſouth lour common Seale preſenta al dit Eſglíſe adonques void vn Allen Scot, que fuit admit, inſtitute, & induct, & que le dit Allen Scot** 20. Maij anno 10. dominæ Elizabethæ nuper Reginæ Angliæ (**le dit Allē adonques eſteant Parſon del dit Eſglíſe & Prouoſt del dit Hall**) **per ſon fait demiſa le dit Rectorie de Charleton ſup Otemore al William Shillingford p̄ le terme de 81. ans & puis, s. le 30. iour de meſme le mois de Maye,** Præpoſitus Aulæ ſiue Collegij predict', & ſcholares eiuſdem Aulæ, per nomina Præpoſit', ſociorum, & ſcholarium Aulæ vel Collegij Reginæ in Vniuerſitat' Oxon', Rectoriæ Eccleſiæ de Charleton ſup Otemore patroni, per ſcriptum ſuum ſigillo ſuo communi ſigillat', **confirme le dit demiſe: & que Hugh Eueſque de Oxon Ordinarie de meſme le lieu, ceo confirme auxy in le dit 10. an in le vie de dit Allen Scot, et que Allen Scot mozuſt: apres que mort le dit Henry Ayray al dit Eſglíſe donques voide fuit loialment preſent̄, admitte, inſtitute, et inducte, et que le dit Hent̄ Alcocke ad leſtate & intereſt del dit William Shillingford, que enter in le dit Rectorie et fuit ent poſſeſſe: & que le dit Henrie Ayray adonques eſteant Parſon, & les auters defendants per ſon commaundement entront in les tents in queux &c. ſur le poſſeſſion del dit Henry Alcocke &c. Et le doubt que le Jury refiert al Court fuit, le quel le dyt demyſe del dyt Rectorie fuit byen confirme ou nemy &c. Et fuyt obiect, que cybien le dit confirmation come le dit preſentation fueront tout ouſterment voyde per reaſon del miſpryſion del voyer noſme del Corporation: Et pur ceo le primer queſtion, que fuit fait, fuit, que fuit le voyer noſme del Corporation, & ſemble a eux, que le voyer noſme del Corporation fuit** Præpoſitus & ſcholares Aulæ ſcholarium Reginæ de Oxon', **et ceſt noſme ils collectont hors des parols del Charter meſme, que le Roy licence le dit Robert Egleſfield a founder** quandam Aulam Collegialem de Scholaribus &c. ſub nomine Aulæ Scholarium Reginæ de Oxon', quæ per vnum Præpoſitum de dictis Scholaribus &c. gubernabitur: **Donques ceo eſteaunt le voyer noſme, inter le dyt voyer noſme del Corporation et le dit Confirmation cinque variances fueront obſerue,**

s. trois

s. trois in addition, et vn in alteration, et vn in omiſſion. In addition, primerment de ceſt parol (ſociorum) car le confirmation eſt Præpoſitus, ſocij & ſcholares, ou ſerroit Præpoſitus & ſcholares: ſecondment, de ceux parols (vel Collegij:) tiercement, de ceſt parol (Vniuerſitate.) In alteration, s. (de) pur (in) car le voyer noſme de corporation fuit, de Oxon', & le confirmation fuit in Vniuerſitate Oxon'. In omiſſion, de ceſt parol (ſcholarium) in lieu materiall, ou ſerra Aulæ ſcholarium Reginæ, ceo eſt Aulæ reginæ. Et in le preſentment diuers variances fueront obſerue, vn alteration, s. Collegij pur Aulæ, & les auters miſpriſions in addition, alteration, et omiſſiõ. Et touts ceux fueront argue al barre per Couentre & George Croke del part del pl', & per Thom. Crewe & Yeluerton ſolicitor del part del def. & touts les dits variances forſque vn fueront vnement reſolue per touts les Juſtices deſtre ſans queſtion, et nemy deigne dalcun argumẽt, & ne fueront dalcun force a impeacher le dit confirmation ou le dit preſentation. Et le ſole point, que ad alcun ſcruple fuit le dit variance de omiſſon de (ſcholarium) apres ceſt parol (Aulæ:) Et ceo depend ſolemẽt ſur le conſideration del voyer noſme del Corporation, et quel diuerſity fuit inter ceſt caſe et le caſe de Fiſher & Boys report per moy in le 10. part de mes Commentaries in le caſe del Mayor & Burgeſſes de Lynne, le quel proces veyer la, quel caſe fuit affirme per toutz les Juſtices deſtre bone ley.

¶ Et vncore fuit reſolue, que in le caſe al barre tyben le confirmation come le preſentmẽt fuit aſſets bone, nient obſtant le omiſſion del iteration de ceſt parol (ſcholarium:) car fuit reſolue que ſur conſideration del dyt Charter le Roy E. 3. et del inſtrument del dit Robert de Egleſfield le voyer noſme del incorporation fuit, Præpoſitus & ſcholares Aulæ Reginæ de Oxon', car appiert per le Charter noſme, que le noſme de Corporation requiert ſolement vn foits ſcholares, et nemy alcun double iteration de ceo (quel come fuit dyt fuit oculus queſtionis) et ceo pur diuers reaſons: 1. que in le clauſe de ſub nomine ceſt parol fuit forſq; vn foits mention: 2. coment que in le ſub nomine eſt dit, Aulæ ſcholarium Reginæ, vncore in conſtruction, come in mults caſes eſt vſe, ceo couient precede ceux parols Aulæ Reginæ, et ceo pur trois cauſes: 1. autrement ſerroit ſole Corporation conſiſtant ſur Prouoſt ſolement, car donques le Corporation ſerroit per nomen Præpoſiti Aulæ ſcholarium Reginæ,

et nemy corporation aggregat de plusors, come chescun ad agree que ceo fuit: 2. maintainant apres ceux parols sub nomine Aulæ Scholarium Reginæ, ceux parols sont adde, quæ per vnum Præpositum de dictis scholaribus &c. gubernabitur, ils sont q̃ appiert clerement q̃ cest parol (scholares) ne serr̃ forsq; vn foits mention in le Corporation: 3. tiel construction est directment approue per trois interpretors omni exceptione maiores, s. le Roy Ed. 3. in son Charter, le dit Foundor Robert Eglesfield in son instrument de foundation, & le incorporation mesm̃: 1. per le Charter in les parols procheine subsequent est dit, ac mesuagium illud cum pertin' pret. Præposito & scholaribus dare possit &c. ou ceux parols (Præpositi & scholares) sont conioine ensemble, auxy la le Habend' est, Habendum & tenendum sibi & successoribus suis Præpositis & scholaribus Aulæ illius, in queux porols le Roy non solement cõioine le dits parols insemble, mes auxy le Roy done precedence de cest parol (scholaribus) deuant Aulæ illius, & nul mention de eux apres, auxy Nolentes quod prefat. Præpositus & scholares aut successores sui &c. 2. in le instrument del dit Robert de Eglesfield, le Foundo ordaine, q̃ le dit Colledge serr̃ a touts tours noiate Aula Reginæ (et nemy Aula scholarium Reginæ) et il dit, Aula Reginæ æternaliter nominanda: 3. le Corporation mesm̃, del dit temps de Incorporatiõ, ne vnques accept ascun graunt ou fist ascun graunt oue double iteration de cest parol (scholares) mes oue vn singular mention de eux solement, come appiert per mults et pene infinite presidents. Auxy ceo ne fuit vnques appel in vulgar appellation Queenes scholers Colledge, ne ascun conust ceo p̃ tiel nosme, mes chescun scauoit ceo per nosme de Queenes Colledge. Et per cest determination del voyer nosme appiert, q̃ la nest ascun affinity inter le dit case de Fisher & Boys, et le case al barr̃, car la est double itineration de cest pol (schollers) in 2. lieus materiall, et in le case al barr̃ forsque vn singular mention de ceo solement.

¶ Et quant a les auters variances fuit resolue, que nul de eux fueront material; car primerment, nomen est quasi rei notamen, et nomina sunt notæ rerum, et fueront inuent a faire distinction inter person & person, et in le case al barre le Colledge fuit noiate per tiel nosme que ceo poet estr̃ bien distinguishe de chescun auter Colledge in mesme le Vniuersitie: Secondment, coment que est dit in 21. Ed. 4. 55. et auters liures, que le nosme dun incorporation est semble al

nosme

nosme de Baptisme, vncore si le person soit issint describe que il poet estre certainement distinguible de auters p̄sons, le omission, ou in ascun case le misprision del nosme de baptisme, ne auoidra le grant, come done omnibus filijs I.S. ou primogenito filio I.S. ou vxori de I.S. ou filiæ de I.S. quant nest que vn &c. 37.H.6.10. 11.Ed.4.2. 18.Ed.3. 30.Ed.3.18. 12. Ass.16. et in 27.Ed.3.385. le nosme de Baptisme del Abbot de W. fuit Richerus, et il per le nosme de Richardus Abbas de W. fist vn grant, & coment que son nosme de Baptisme fuit misprise, vncore pur ceo que les auters parols, s. Abbas de W. describe certainment le person a cest cause le graunt nient obstant le misprision del nosme de Baptisme, fuit bone: Issint si graunt soit fait I.S. & Margaretæ vxori suæ, ou le nosme de feme est Margeriæ, ou I.S. & Mariottæ vxori suæ, ou le nosme de feme est Marion, vncore le graut est bone, coment que nosme de Baptisme soit misprise, p̄ ceo que vxori suæ est certaine description del person. 1.H.5.8. 46.Ed.3.22. 1.Ass. 11. 12.Ass.16. 9.H.7.9. 3.H.6.25. 12.R.2.Feoffements & Faits 58. 22.Ed.3. Breue 936. 9.E.3.14. 46.E.3.22. 14.Hen.7.21. Issint Roy est nosme de Corporation, vncore grant fait al Roy per nosme de Soueraigne Lord Iames omittant cest poll (Roy) est assets bone, car Nihil facit error nominis cum de corpore constat, & hæc fuit vetus & constans opinio in case de Corporations: Et pur ceo in 26.Ed.3.66.67. Isabel Roigne Dengliterre port briefe de Couenant vers William Prior de Couentre, de ceo que Hugh Prior de Couētre (predecessor a luy) et son Couent mist eux al agard del dit Roigne & son Councel, del heritage que fuit al B.M. in Couentre & partibus adiacentibus, & des tenements del Roigne in Couentre, et de eux que fuerent in ayde de luy, & auxy des tenements del Prior de Couentry, & que fuerent in aid d̄ luy, et le fait de couenant voille, Hugh Prior de nostre Dame d̄ Couentre: Mutford (que fuit accouncel oue le def.) Mo⁹ auez in vr̄e brief et count omit nostre Dame, iudgement del variance inter le Corporation & Lespecialty: A quel Grene (accouncel oue le pl̄) dit, que le Prior & auxy Leglise d̄ Couētre est foundue per le nosme de S. Michael, & issint ieo ne puis auer briefe accord al specialty, car vous le purres abater nient obstant le fait soit bone: & Mutford, per le rule del Court, fuit mise a rēder, p̄ que il plead auter matter, Issint q̄ in ceux iours le misprision in vn fait del Saint, a q̄ le corporation fuit dedicate, ne fuit sufficient dauoider lour fait,

pur ceo q̄ Hugh Prior de Couentre fuit vn certain descrip-
tion del corps, mes puit abatet̄ le briefe, pur ceo que il puit
purchaser auter. Vide Fitzh.Nat.Bre. in briefe de Corodio
habendo le noſme de Saint omitte: Et ou la fuit vn Prior
de noſtre Dame de Southwark, & vn Prior de le Trinity
de Londres, & le dit Prior de noſtr̄ Dame de Southwark
dauncient temps, per le noſme de les Channos de South-
wark grant̄ per lour fait al aut̄ Prior, p le noſm̄ del Chan-
nons del Londres, vn Annuitie &c. et ceo fuit adiudge bone
in 17.Ed.3.32. car coment q̄ le precise noſme del Corporati-
on ne fuit pursue, & le Saint a que le meaſon fuit dedicate
omiſe, vncore intant que in veritie le Prior de chelcun des
meaſons fuit vn des Channons de ceo, a ceſt cauſe (cui tunc
que ſatis conſtabat de perſonis) prudent & ſage Antiquitie ad-
iudge tiel graunt bone. Auxy appiert in noſtre liures, que l
noſme del Corporation des Templers fuit, Magiſter Militiæ
Templi de Ieruſalem in Anglia & confratres ſui, 3. Edw. 3. 11.
5.E.3.36. 31.Edw.1. Trial 99. Et le noſme del Corporatiõ
del Priorie de S. Johns de Jeruſalem, Prior Hoſpitalis
Sancti Iohannis de Ieruſalem in Anglia & confratres ſui, come
appiert in 44.Edw.3. Donques le ſtatute de Templarijs eſt
deigne de conſideration fait anno 17.Ed.2. in le preamble de
quel mention eſt fait, de adnullat' ordin' Militiæ Templi & de
fratribus eiuſd' ordinis, & in le corps del act, ordo Militiæ Tẽ-
pli & de fratribus eiuſdem ordinis, & eſt purueu per meſme le
act, quod omnia terræ, tenementa, &c. quæ fuerunt dictorum
Templariorum, aſſignentur & liberentur ordini fratrum Hoſpita-
lis Sancti Iohannis Ieruſalem, Habend' & tenend' eiſdem Priori
& fratribus & ſucceſſoribus ſuis, de domino Rege & alijs domin̄
feodorum predict', per illa eadem ſeruicia per quæ fratres ordinis
Militiæ Templi ei tenuerunt: in quel act, coment que les ſea-
ſors del act ne pursue les precise parols del Corporation ou
des Templers ou des Hoſpitalers, vncore pur ceo que ils
fueront cy certainement deſcribe quod conſtat de perſonis,
les parols del dit act fueront ſufficient a trãſferrer les poſ-
ſeſſions Magiſtri Militiæ Templi Ieruſalem in Anglia & confra-
trum ſuorum Priori Hoſpitalis Sancti Iohannis Ieruſalẽ in An-
glia & confratribus ſuis, & iſſint ad eſte touts foits allowe in
noſtre liures, 1.Edw.3.9. 3.Edw.3.11. 5.Ed.3.36. 35.H.6.46
Vide 4.Ed.4.24. John Abbot de D. fait obligation p noſme
de I. C. Clericus de D. & tenus bone, & vncore Labbot eſt
mort perſon quant a touts reſpects forſq̄ de tiels acts q̄ur

il

il fait come Abbot: Et home poet auer briefde Droyt daduowſon de Aduocatione Eccleſiæ de D. & donques ſi ſoyēt 2. Eſglileſ in vn ville, le teñ auera le vieu, mes ſi ſoyent 2. Eſgliſes in vn ville dedicate a 2. ſeuerall Saynts, p̄ example a S. Mary, & S. Peter, donques ſi brief ſoyt port de Aduocatione Eccleſiæ Sanctæ Mariæ de D. le teñ nauer̄ le vieu, iſſint per ceo appiert que in brieue de Droit daduowſon, in que laduowſon del Eſglile ſer̄ recouer, le dōt poet in ſon bre addeꝛ ou omitteꝛ le noſme del Saint a ſon pleaſure, 48.E.3.31. 21.E.3.57. 36.H.6.16. Regiſtr' 33.& Fitzh. Natur. Br. 49. ſi Præbendarius Præbendæ de N. in Eccleſia Sancti Petri Ebor', ſans dire in Eccleſia Cathedrali, quel eſt in verity ſon droyt noſme; iſſint ibidē in Eccleſia Sancti Pauli London', & in Eccleſia beatæ Mariæ Lincoln' &c. in 18.Edw.3.fol.10.& 11. le caſe fuit, que in le ville de Toft Newton la fueꝛ deux Eſgliſes, lun de Saint Michael, lauter de Saint Peter & S. Paule, & le verity fuit que Toft Newton fuit vn vill', & in ceſt fuit vn eſgliſe conus p̄ le noſme del eſgliſe de Toft Newton, & en Newton que fuit hamlet de Toft Newton fuit vn auter eſgliſe conus per noſme de Newton tantum, &, la Quare impedit fuit port ad Eccleſiam de Toft Newton ſauns pluis, & bene, coment que le Saint fuit omiſe, pur ē que la fuit aſſets diuerſity per que leſgliſe dont le brieue eſt port poet ēe conus, & pur ceo *Wilby* chief Juſtice (que dona ſ rule) dyt, leſgliſe eſt aſſets incertaine, pur que r̄ndes, et la iſſue fuit priſe nemy del noſme del ville mes del ſurnoſme del eſgliſe, s. que fueꝛ deux eſgliſes in Toft Newton, ſans ceo que aſcū des eſgliſes port le noſme del eſgliſe de Newton: & in 17.E.3.48. vn fuit noſme Burgenſis de nouo caſtro ſuper Tinam, & exception fuit priſe, q̄ Burges conſiſt eſtē ō certaine ville & non pas de caſtle, ſed non allocatur, car les auncient ſages del ley reiect tiels niceties concernant appellations ou noſmes. Et quant al addition de ceſt parol (ſociorum) en le preſentation, ceo ne impeache le preſentation, car nient obſtant ceſt addition, le colledge eſt aſſets bē certainment deſcribe que il poet eſte diſtinguiſh del cheſcun auter, & pur aſcū choſe que appiert en le caſe ſocij & ſcholares poiēt ēe Synonoma, & en le dit Chē le Roy noſme ſcholares p̄ de noſme de ſocij: Vide 20.E.4.20. accoꝛd̄ a ceſt reſolution.

Et p̄ le addic̄ de Vniuerſitate, c̄ fuyt clereīt ouerrule, coīn deuant fuit in le dit caſe inter Fiſher & Boys, & p̄ les reaſons & cauſes la repoꝛt.

Iſſint

Doctor Ayrayes caſe.

Iſſint pur le addition de ceux parols (vel Collegij) apres ceſt parol (Aulæ) et pur mitter ceſt parol (Collegij) in lieu de (Aulæ) nul de ceux ad aſcun colour dun material variance, mes ſont eadem re & ſenſu. Et le Roy Ed. 3. in ſon Charter notate le dit Hall deſtre vn Colledge, come in verity ceo eſt. Et ieo aye fait plus briefe Report de ceſt caſe, pur ceo que ieo ay publie le caſe del Maior &c. de Linne in le darreine part de mes Commentaries, que eſtoit in effect ſy in largument, et diuers iudgements la cite tendant a meſme le fine.

Trin.

Trin. 12. Iacobi Regis.

Henrie Harpurs caſe.

IN Electione firmæ inter John Wirral pl', et Henry Harpur armig', & Barbara ſa feme def. que commence Trinit' 11. Iacob. Regis, Rotulo 553. in banke le Roy, le pl' count, q̃ lour Thomas Seyliard arm et Elizabeth ſa feme 24. Maij anno regni domini Iacobi nunc 11. apud Bredon in Com' Leiceſtr' per lour Indenture &c. ey monſtre auant, demiſont al dit John vn meaſe, 30. acres de terre, 10. acres de pree et 12. acres de paſture oue lour appurtenãces in Workington in parochia de Bredon in Com' præd', ac etiam vnam capellam cum pertin' in Workington in parochia de Bredõ prædict', necnon omnes & omnimodas decimas quaſcunq; annuatim prouenien' in Workington & Willeſdon p̃d in paroch. de Bredõ pred in com' p̃d per nomina totius illius meſuagij, cum omnibus domibus &c. clauſis, terris, pratis, paſtur', communis, & hereditamentis ill' pertin' in campis ſeu hamlet' de Workington in parochia de Bredon in com' prædict', ac etiam per nomina omnium & omnimodarum decimarũ quarumcunque annuatim creſcen' in hamlet' de Workington & Willeſdon in præd. parochia de Bredon, cum pertin', habend' & renend' tenementa & decimas prædict' cum pertin' del feaſt del Annunciation de noſtre Dame donques darreine paſſe p̃ 7. ans, per force de quel idem Ioh. Wirrall in tenementa & decimas prædicta 24. die Maij anno 11. ſupradict' intrauit & fuit inde poſſeſſ. quouſque prædict' Henricus & Barbara poſtea, s. eodem 24. die Maij anno 11. ſupradicto

apud

apud Bredon prædict' vi & armis in ten'ta & decimas pred' cum pertinen' ſuper poſſeſſionem ipſius Iohannis inde intrauerunt et luy eiect &c. al damages de xl.l.&c. Et ſur rien culp̃ plead, les Jurors done vn ſpeciall verdict a ceſt effect: Henry Beaumont Chiualer fuit ſeiſie in fee del manor de Gracedieu in le County de Leiceſtr̃, & ceo teignoit del roy p̃ ſeruice de Chiualry in capite, & fuit auxy ſeiſi in fee del mannor de Normanton in le County de Darby, et ces teignoit del Roy per ſeruice de Chiualry in capite, & le prymer iour de October, anno regni Regis Iacobi nunc Angl' 2. p̃ Indenture port̃ date meſme le iour & an, in conſideration dun mariage deſtre ſolemnize ent̃ luy & Barbara Faunt, & p̃ laduancement et preferment in liuing de tiels iſſues queux il & le dit Barbara auera, couenant & grant oue Andrewe Noell et Henry Haſtings Chiualiers & lour heires, que le dit Henry Beaumont et ſes heires eſtoyen̄ ſeiſies des dits mannors al vſes inſuants, viz. del dit mannor de Gracedieu al vſe del dit Henry Beaumont et aux heires males del corps del dit Henry ſur le corps del dit Barbara deſtre procreate, et puis al vſe de John Beaumont ſon ſecond frere et a les heires males de ſon corps, et puis al vſe de Francis Beaumont ſon frere puiſne & a les heires males de ſon corps, et puis al vſe des droit heires del dit Sir Henry: et del manor de Normanton̄ al vſe de les dits Henry et Barbara pur le ioincture del dit Barbara, et a les heires del corps del dit Henry, et puis al vſe del dit John Beaumont et a les heirz males de ſon corps, & puis al vſe del dit Frācis Beaumont et a les heires males de ſon corps, et puis al vſe des droyt heirs del dit Sir Henry. Et puis le dit Sir Henry eſpouſe le dit Barbara: Et les Jurors oulterr̃ouuont, que vn Edward Sharpe fuit ſeiſie in fee des ten̄ts et Diſmes in le count ſpecifie in queux &c. et eux teignoit de noſtr̃ Seign̄r le roy come de ſon mannor de Eſt Grenwich in free ſocage per fealty ſolement: & 7. Martij anno 3. domini Regis nunc per ſon Indenture port̃ date meſme le iour & an, et inrolle ſolonque leſtatute, in conſideration de xxx.l. bargaine & vend al dit Sir Henry Beaumont et a ſes heires les dits tenements & diſmes in queux &c. per force de quel il enter et fuit ent ſeiſie in ſon demeſne come de fee. Et puis le dit Sir Henry 7. Iulij anno 3. fiſt ſon darreine volunt in eſcript, et per ceo deuiſe, que ſes executors vendet̃ le dits tenents et Diſmes in queux &c, et fiſt ſon ſoer Eliz. John Towne &

Edw.

Edw. Sharpe les Executors. Et le dit Sir Henrie iſſint eſteant ſeiſie des dits manors, tenements, & diſmes, come eſt auantdit, 7. Iulij anno 3. ſupradicto mourust ent ſeiſi, ayant iſſue del corps del dit Barbara vn Barbara ſon file & heire. Et que le dit mannor de Gracedieu al temps del confection del dit Indenture, & al temps de mort del dit Sir Henrie, fuit del annuel value de 30. l. et que le mannor de Normãton fuit adonques del annuel value de 18. l. et que les tenements & diſmes in queux &c. fuer̃ adonques del annuell value de 3. l. et que les dits executors pur argent vendont les tenements & diſmes in queux &c. al Thomas Wroth armig̃, & William Towſe armig̃, et lour heires, queux cõueyont eux al dit Eliz. lun des dits executors, et a ſes hẽs, que priſt a baron le dyt Thomas Seylyard, queux font le leaſe in le count ſpecifie al pl̃ prout &c. per force de que, le dit John Wirrall enter in les dits tenements & diſmes in queux &c. & fuit ent poſſeſſe, tanq̃ les defendants vi & armꝭ in tehementa & decimas enter & ent eiect le pl̃, et iſſint eiect et expulſe de ſon poſſeſſion extratenuer' & adhuc extratenẽt: et ſi les defendants fueront ſur tout le matter culp̃ ou nemy, les Jurors priont le aduiſement des Juſtices &c. Et apres que ceſt caſe ad eſtre argue in diuers ſeueral terms al barr̃, et in meſme ceſtuy Terme per les Juſtices al Bench, ceo receiue meſme le reſolution que fuit in Louyes caſe, que ieo aye publie in le ninth part de mes Reports, fol. 80. & 81. Et pur ceo ieo voylle ore faire de ceſt caſe le pluis ſummarie Report.

¶ In ceſt caſe fuit primerment vnement reſolue, q̃ ſi le teſt le Roy per ſeruice in Chiualry in capite conuey ſon terre tenus in capite a vn de ſes fits in fee, ou al vſe de ſa fẽe in fee &c. et puis il purchaſe terres tenus in Socage, que in ceſt caſe il poet per ſon volunt in eſcript deuiſe tout la terre in Socage, pur les reaſons et cauſes in le dit Caſe de Louies.

¶ 2. Que le reuerſion del fee q̃ le dit Sir Henry ad expectant ſur eſtates in taile impediera le deuiſe dez aukꝭ frees pur vn tierce part des aukꝭ frees tenus in Socage, coñt q̃ ſur le creation del eſtate del manor de Normanton a luy et ſa feme & aux heires de ſon corps, le Roy eſt dauer 3. pt in gard durant le vie de feme p̃ leſtatute pur m̃ leſtate ſur que le reuer̃ depend, & coñt q̃ il ſoit vn ſeck reuer̃ ſans rent ou aſcun profit.

¶ 3. Que

¶ 3. Que coment q̃ le reuerc̃ del fee continue in luy, vnc̃ il poet deuiſer 2. parts des tres nouelm̃t purchaſe, & ſil ad grant ouſter le reuerc̃ in fee, il puit aũ deuiſe tout le terre tenus in ſoccage purchaſe apres.

¶ 4. Coment que il ad execute ſon power p̃ pluis que deux parts al vſe de ſa feme, vncore pur les tres in ſocage queux il purchaſe apres (ſi le reuerſion nuſt continue in luy) il puit auer deuiſe tout nient obſtant lexecution de ſon power deuant, & intant que le reuerſion del fee continue in le cas al barre, le deuiſe fuit bone p̃ deux parts: & meſme les reaſons pur touts ceux reſolutions fuer̃ rendue in ceſt caſe al barre queux ſont repoꝛt in Loueys caſe.

¶ 5. Fuit obiect que riens paſſa al John & Frãcis freres del dit Sir Henry pur 2. cauſes: 1. pur ceo que ils ne fuer̃ deins le conſiderations expreſſe, ceſtaſcauoir, pur laduancement del dit Barbara, & des iſſues que il pꝛocreate del coꝛps del dit Barbara, iſſint que les frers ſont hoꝛs del conſideration. Car Expreſſum facit ceſſare tacitum; et pur ceo ſi ieo couenant per fait indent que in conſideration de C.l. pay a moy per mon fits, que ieo eſtoiera ſeiſi al vſe de luy et ſes heires, ſi le fait ne ſoit inrolle ſolonque leſtatute, riens paſſa, pur ceo que le expreſſe valuable conſideration tolle le tacite imply conſideration de ſanke, et nul auter conſideration poet ẽe auerre que eſt conteine in le fait, pur ceo que le ſubſtance del agreement eſt per aſſent dez partiez referre al fait. 2. Meſt troue in facto que les dits John & Francis fuer̃ ſes freres, et iſſint per le couenant riẽs veſt in eux in rem̃, & donques quãt Sir Henry moꝛuſt ſans iſſue male, le maner de Gracedieu diſcẽd al Barbara in fee ſimple, iſſint que vn pleine 3. part & pluis diſcend a luy, per que le deuiſe ſerc̃ bone pur tout le dit terre & diſmez in queux &c. tenus in ſocage, & iſſint Judgement ſerc̃ done pur l'pl' pur tout. Mes fuit reſolue, que les vſes fuer̃ bien raiſe a les freres in le rem̃: & vn iudgemẽt fuit cite in ceſt court in det inter Eliz. Bedell pl' & Michael Bedel def. que commence Hill. 1. Iacobi, Rot' 375. & eſt in le 7. part de mes Reports fol. 40. ou ſur le recoꝛd le caſe fuit tiel: Robert Bedell ſeiſie in fee dun meſe &c. in Iuer & Langley in le County de Buck. ad iſſue per Eliz. ſa feme 3. fits, dont James fuit le 2. & le dit Michaell le defendaunt le 3. per fait indent tripertite, int le dit Robert & ſa feme del pmer part, le dit James ſon fits del 2. part, & le dit Mich. ſon fitz del 3. part, in conſideration del

naturall

natural affection, & paternal amour q̄ il ad al dits James & Mich. et p̄ lour melior p̄ferm̄t et aduancem̄t, le dit Robert couenant oue le dit James et Mich. q̄ il & ſes heires eſtoier̄ ſeiſie del dit meſe &c. al vſe de luy in̄ pur vie, & puis al vſe del dit Eliz. ſon feme pur ſon vie, & puis dun moitie al vſe del James in taile, et del auter moite al vſe de Mich. in taile. Et puis Robert mozuſt, et tout ceſt matr̄ fuit troue per ſpeciall verdict, et le ſole queſtion de ceſt caſe fuit, Si aſcū vſe fuit raiſe al Eli. ſa feme? Et les ij. obiections fuer̄ moue enconter la feme, que ont ẽe faits enconter les freres in le caſe al barre.

¶ Et fuit reſolue, quant al p̄miñ, q̄ le conſideration que el fuit ſa feme fuit apparant in le fait, & nul auꝰ conſideration fuit expreſſe a raiſer vſe a luy mes q̄ el fuit ſa feme, et p̄ ceo ſi le caſe q̄ ad ẽe miſe ſerr̄ admitte, ou le pier couenant p̄ fait indent̄ oue ſ̄ fits in conſideration de C. li. q̄ il voille eſtoyer ſeiſie al vſe de luy et ſes heires, q̄ in ceſt caſe l' fait couient ẽe inrolle ſolonꝫ leſtatute, ou rienꝫ paſſer̄, vncoꝛe c̄ neſt deſtre reſemble a le caſe al barre, p̄ c̄ q̄ la eſt valuable conſideration expreſſe in le fait deſtre done p̄ le fits, mes iſſint neſt le caſe al barre, & cõſideration q̄ eſtoit oue le fait poit ẽe aũre, nient obſtant q̄ il neſt conteine in le fait, cõe eſt adiudge in 3. & 4. P. & Ma. Dyer 146. Villers caſe, & iſſint reſolue in le primer part de mes Reports, fol. 176. in Mildemayes caſe.

¶ Quant al 2. fuit reſolue, q̄ ne beſoign̄ dauerrer q̄ el fuit ſa feme, car ceo eſt apparant in le fait, & Manifeſta probatione non indigent. Vide 13. H. 4. 17. in Aſſ. de Mortdaunceſter, 46. E. 3. 33. H. 6. 13. 3. H. 6. 32. Plo. Comm. in Talbois caſe &c. q̄ choſes apparant ne beſoigne deſtre auerre, & ſi in veritie el ne fuit ſa feme, ceo viendꝛa eins del auter part, & pur eux cauſes fuit adiudge que le vſe fuit bñ raiſe al dit feme: ſur q̄l Judgment vn brē Derroꝛ fuit poꝛt, et in Leſchequer Chamber, Mich. 5. Iacobi Regis, apꝛes diuers arguments oyes al barre le Judgm̄t fuit affirme, pur les reaſons & cauſes auantdits vna voce p̄ touts les Juſtices del common Bank & Barons del Eſchequer.

¶ 6. Fuit reſolue, que pur le Mannoꝛ de Gꝛacedieu leſtate taile vaniſh per le moꝛt del Sir Henry ſans iſſue male, et pur ceo tiel eſtate taile que iſſint vaniſh per ſon moꝛt neſt alcun cauſe a reſtrainer le deuiſe pur alcun part, come ſouent foits ad eſtre reſolue, mes le reuerſion in fee in ceſt caſe eſt le cauſe a reſtrainer le deuiſe pur le 3. part.

Iſſint q̄ fuit reſolue ſur tout le matter q̄ le pl̄ auera Judgement pur ij. parts vers le def. Mes le chiefe Juſtice obſeruant bñ le count & le viſne, in le concluſion de ſon argument moua ceux exceptions: 1. Que le Eiectione firmæ eſt pozt de omnibus & omnimodis decimis in Workington &c. ſans dire garbarum fœni, lanæ agnellorum, ou aſcũ certaintie del nature ou qualitie des Diſmes dont certaine Judgement poit ẽe done, ou execution pur habere fac' poſſeſſionem ewe. Et ĩ appiert in laſt. pozt de quadam portione decimarum &c. in 7. E. 6. 84. Dyer. Car coñt q̄ le meaſure ou certeine number de eux ne ſerra expreſſe, car le fruitfulneſſe ou barrenneſſe poit eux encreaſe ou diminiſhe, vncoñ les ſeueral kinds doient ẽe expreſſe: Auxy poit ẽe que tout k̄ tithing conſiſt in modo decimandi p̄ paiñt del annuel ſomme in ſatiſfactiõ des diſmes, dont nul Eiectione firmæ giſt: Et leſtatute de 32. H. 8. q̄ done laction pur diſmes done ceo, as they ſhould or might doe for lands &c. mes in action pur k̄es le pl̄ doit mk̄e le qualitie ou nature de eux, come k̄e, pree, paſture, bois, &c. Paſch. 5. Iacobi Regis, Le counteſſe de Oxoñ pozt bk̄ de Dower dẽe indowe de prediall diſmes, & count ỏ le ĉteinty de kinds, come des garbes, &c. deins tiel ville; & in ñ le caſe fuit tenus, q̄ le pluis indifferent aſſigneñt eſt del iij. garbe, car ſi les garbes del tierce part del errable k̄re ſoit aſſigne, eſt in election del k̄retenant, le q̄l il voill̄ ſemer ĉ ou nemy. Iſſint Mich. 3. & 4. Eliz. repozt p̄ Bendlowes Serieant del Ley, in dower dũ Molin in Wadeſmil in le County de Hertfozd, laſſigneñt fuit del 3. part Molendini, viz. de integro Molendino per quemlibet tertiũ menſem &c.

2. Neſt fozmall a pozt k̄ Eiectione firmæ de vna capella, mes doit ẽe p̄ noſme de Meſe.

3. Le Venire fac' fuit de vicineto parochiæ de Bredon, q̄ fuit malement agard, car p̄merñt le leaſe & le eiectment auxy ſont alledge dẽe fait al Bzedon, q̄ ſerk̄ entend dẽe vn ville, & le meſe & terres ſont alledge dẽe in Wozkington (que auxy ſerk̄ p̄iſe pur vn ville) in le pariſh de Bzedon, iſſint q̄ oze appiert al Court q̄ eſt vn ville appel Bzedon, vn pariſh appell Bzedon, & Wozkington vn ville in le pariſh ỏ Bzedõ, & les diſmes ſont alledge dẽe in Wozkingtõ & Willeſdon (q̄ auxi ſerk̄ deſtre intend vn ville) in parochia de Bredon; iſſint que le viſñ ne duiſt ẽe hozs del pariſh de Bzedon, mes hozs ỏ Bzedon, Wozkington, et Willeſdon, car le viſne ſerra touts foits agard hozs del lieu que conteine le pluis certainetie,

et

et conſt q̃ Worſkington & Willeſdon ſont noſmes hamlets in le per nomen, vnt̃ le Court doit adiudge ſur ẽ q̃ eſt alledge p̃ le pl̃ in ſ̃ count. Et le chiefe Juſtice mõe le reaſon q̃ moue luy a p̃nder ceux exceptions, q̃ fuit q̃ ſ̃ils donet̃ Judgm̃t, ceo poet eſtre reũs p̃ bõ de Erroꝛ p̃ ceux cauſes, q̃ poit blemiſher in tẽps auener lour reſolution cõcernant l' matt̃ in ley. Per q̃ p̃ le conſent de tout le court, p̃ le cauſe auantdit, nul Judgment fuit ent̃, mes fuit dit al barre, q̃ le court de Gards, ou Bill depend pur ceſt matt̃ (& p̃ oꝛder de quel court le matt̃ in ley fuit deſtre adiudge p̃ le common ley) voet p̃nder oꝛder p̃ le poſſeſſion accoꝛdant.

Trin. 12. Iacobi Regis.

Henrie Pigots caſe.

Benedict Winchcombe armig. port actiõ de Det vs Henry Pigot, quel fuit enter Trinitat' 11. Iacobi Regis, Rotulo 566. in banco Regis **ſur obligation fait al plaint' in** 60. li. 2. Martij. anno 8. Iacobi Regis. **Le defendant ſaung demaunde de oyer del obligation ou condition pleade** Non eſt factum. **Et les Jurors done vn ſpeciall verdict, a ceſt effect; que le obligation fuit fait al plaintife in meſme le manner come il ad count, et troue le obligation in ceux parols**, Nouerint vniuerſi per præſentes nos Georgium Watkins generoſ. Henricum Pigot de Ciuitate Oxon' Draper, & Iohannem Pyme de eadem Ciuitate Cordweyner teneri & firmitèr obligari Benedicto Winchcombe armig' in 60. libris &c. **Et in veritie le pl' fuit Vicount del Countie de Oxon, et le condition del Obligation fuit, que le dit George Watkins apperet' in Banke le Roy** menſe Paſchæ **a reſponder a George Cottle in plea de Treſpaſſe, et que le dit obligation fuit deliuer per le dit Henry Pigot come ſon fait al vſe del plaintife, et que puis le deliuery del dit fait**, hæc verba ſequentia, videlicet (Vicecom' Comitatus Oxon') inſert' & interlineat' fuerunt in eodem ſcripto poſt prædicta verba (Benedicto Winchcombe armig') & ante prædicta verba (in ſexaginta libris (ſuperius in obligatione prædicta mentionat', ſine noticia Anglicè the priuitie, ſeu

ſeu mandat' præd' Benedicti, & vtrùm ſuper tota materia &c. videbitur Iuſtic' & cur' hic, quòd ſcript' præd' ſit factum præd' Henrici necne, ijdem Iur' penitùs ignorant, & petunt inde aduiſamentum Cur' hic &c.

¶ Et in ceſt caſe ceux points fueront reſolue: 1. Quant loyal fait eſt raſe, p̄ que ē deuient voide, le obligor poit pleader Non eſt factum, & doner le matt̄ in euidence, p̄ ē al temps del plea pleade ē neſt ſon fait.

¶ 2. Fuit reſolue, que quant aſcun fait eſt alter in point material per le plaintife meſme, ou p̄ aſcun eſtranger ſauns le p̄iuitie del obligee, ſoit ceo interlineation, addition, raſing, ou per le traction per vn penne dun line per le middeſt daſcun paroll materiall, que le fait per ceo deuient voyde: come ſi obligation ſoit deſtre fait al Vicount pur apparaunce &c. et in le obligation le noſme del Vic̄ eſt omiſe, et puis le deliuery de ceo ſon noſme eſt interline, ou per lobligee ou eſtrang̃ ſans ſon p̄iuitie, le fait eſt voide: Iſſint ſi vn fait obligation de x. li. et puis le enſealing de ceo vn x. eſt adde, que fait ceo xx. li. le fait eſt voide: Iſſint ſi obligation ſoit raſe per q̄ le p̄mer parol ne poet eſte vien, ou ſi ceo ſoit trahe per vn penne & inke p̄ le parol, cement q̄ le p̄mer parol ſoit legible, vncore le fait eſt voide, et ne vnques ſerē iſſue, le quel ceo fuit in aſcun de ceux caſes alter per le obligee meſme, ou per ſtraunger ſans ſon p̄iuity. Iſſint ſi le obligee meſme alter le fait per aſcun des dits voyes, coſſit q̄ ſoit in parols nient material, vncore le fait eſt voide: mes ſi eſtranger ſans ſon p̄iuity alter le fait per aſcun des dits voies in aſcun point nient materiall, ceo ne auoidra le fait. Vide Dyer 9. Eliz. fol. 261. b. Et pur ceo in le p̄incipall caſe le addition fuit per eſtrang. ſans le p̄iuitie del plaintife, eſteant in point nient materiall pur aſcun choſe que appiert al Court, a ceſt cauſe Iudgement fuit done pur le plaintife. Et iſſint vous mieux entendet̄ le liure in 14. Hen. 8. fol. 25. b. Et in ceſt caſe fuit moue al barre, quant vn fait ſerē bone in part, et voide in part. Quant a ceo ſemble a moy diuerſitie quant vn fait eſt voide ab initio, et quaunt ceo deuient voyde per miſfeaſance ex poſt facto. Auxy eſt diuerſitie quaunt le fait que eſt voide in part ab initio, conſiſt ſur le entiertie, et quant ſur diuers ſeuerall clauſes: et in ceux auxy eſt diuerſitie, quant les ſeuerall clauſes ſont abſolute et diſtinct, et quant ſont ſeuerall, et vncore lun ad dependancy ſur auter.

Henry Pigots caſe.

Quant al prīer eſt vnement agree in 14.H.8.25.26.&c. que ſi aſcuns des couenants dun indenture, ou des conditions indorce ſur vn obligation, ſont encounter ley, & aſcuns bone & loyall, que in ceſt caſe les couenants ou conditions queux ſont encounter ley ſont ab initio voyde, et les auters eſtoint bone. Iſſint ſi iij. diſtinct obligations ſont eſcrie ſur vn piece de parchment, et lun de eux tant ū eſt lye al obligee, & il eſteant home nient lettered inſeale & deliuer ceſt fait, ceo eſt bone pur ceſt que fuit lie, & ab initio voide pur les auters: et ceſt caſe eſt agree per Brudnel & Pollard in 14. H.8.26. In 9.H.5.fol.15. vn' porc briefe de Dett de xx. li. vers auter, et count ſur vn obligation de meſme le ſomme, le defendaunt pleade que il fuit lay home et ne conuſt letters, et il conuſt deſtre tenus al plaintife per meſme le fait in xx. s. le quel il ad pay et ent monſtre acquittance, & quant al remnaunt del ſomme in le dit Obligation nient ſon fait; Et ceo fuit tenus bone plea: Quel caſe eſteant dun entier ſomme prcue ſans queſtion que ſi ſoyent ii. abſolute et deſtinct clauſes in vn fait, et lun ſoit lie al party nient lettered et les auters nemy, que le fait eſt bone pur le clauſe que fuit lye, et ab initio void pur le reſidue. Et coment que le fait conſiſtant ſur entier ſomme fuit voide pur tout, come eſt agree in 14.Hen.8.et 30.Ed.3.31. vncore fuit ſagement fait per le Councell del defendant in 9.H.5. a pleader le veritie del caſe de ſon client, et nemy a layſer le matter ſur aſcun queſtion in ley quant le verity del matter voille ouſter touts queſtions. In 30.Ed.3. caſu vltimo, In Aſſiſe deuant Stouffe et auters in pais, le tenant pleade feoffement del plaintife a luy per fait del terre in pr̄ a auer et tener a luy et ſes heires, comprehendaunt vn Letter Datturney a deliuer ſeiſin &c. Et in veritie le plaintife fuit vn lay home nyent ſachant de Letter, & que le fait oue le garr̄ Datturney fuit lye a luy ſolonque le forme dun eſtate taile, et que ſur meſme lentent il ſeala et deliuera le fait oue le Letter Dattorney in ceo a deliuer ſeiſin: In ceſt caſe, coment que le clauſe del feoffement in fee et le garr̄ Dattorney ſont 2. ſeuerall clauſes, vncore intant que le garr̄ Dattorney depend ſur le feoffement et ad relatiō al eſtate in fee, coment q̄ ceo fuyt bien et voyrement lye, tout fuit adiudge deſtre voyde: Et la Thorpe Juſtice dit, q̄ chaſcun fait couient dauer eſcript, ſealer, et deliuery, et quaunt aſcun choſe palleē de ceux queux nauoient intelligence forſque per oyer tantſolement, il couient dauer lecture auxy. Et

voyer

voier eſt que ceſty que ẽ nient lettered eſt repute in ley come ceſty que ne poit veyer mes oyer tantſolement, & tout ſon intelligence eſt per ſon oyer. Et iſſint home que eſt lettered & ne poet veyer, eſt quaunt a ceſt purpoſe prẽſe in ley come home nient lettered. Et pur ceo ſi home ſoit lettered et ſoit blinde, ſi le fait ſoit lie a luy in auter manner il auoydra le fait, pur ceo que tout ſon intelligence in tiel caſe eſt per ſon oyer, come fuit reſolue in le caſe Iohn Shuter del Countie de Wilteſ, in le Starre-chamber, Michael' 9. Iacobi Regis, que fuit home de 115. ans al temps de ſon mort. In 47. Edw. 3. 3. John Pinſchon port briefe de Det vers Thomas Gerues et auters executors de John Northgate ſur obligation fait per le teſtatour de C. li. le defendaunt pleade releas del plaintife de touts manners dactions, et auxy le plaintife per ceſt fait, ad receiue xx. li. del Teſtator &c. et le fait fuit lie, que voilloit que auoit receit xx. li. in ſolutione de C. li. & etiam remiſ. omnimodas actiones &c. A quel le plaintife dit, que le Teſtator fuit indette a luy in xx. li. pur auters contracts, et fuit agree inter eux que le plaintaife releasera ceſt xx. li. et pur ceo que le plaintife fuit lay home et ne ſcauoit que fuit eſcript deins le fait, & que nemy, p accord inter eux le fait fuit deliuer a ceſty Tho. Gerues oze vn des executors dagarder ſur tiel condition que ſi le fait ne parle forſq; de xx. li. in queux il fuit tenus a luy p̃ cauſe dappriſt, que donques le fait ſer̃ baile a John Northgate, & ſi nemy que ſer̃ deliuer al plaintife. Et la Finchden chief Juſtice dit, ſi il eſt voyer ceo que vous dits vous poies ſafement dedire le fait, car quant a parcell q̃ fuit fait ſolonq; lagreement le fait eſt bone, & quant al auter pcell que vn choſe ſoit eſcript de que vous ne ſcaues riens, iſſint que quant a parcell vous poyes conuſter vn fait del parcell, et quant a parcell (que ne fuit lye a luy) dedire le fait. Et ceo eſt in manner affirme per Perſay, mes dit que il ſerra abſurd aux layes gents a pleade Non eſt factum quant al parcel: mes puis ſemble que le dit bailement al Thom. Gerues ne fuit alcun deliuerie del fait ſinon que les conditions fueront perfourme: pur que le plaintife monſtre que les conditions fuer̃ performe, et que le fait per laſſent del plaintife fuit deliuer al teſtator, ſur q̃ iſſue fuit prẽſe, s. que le fait ne fuit deliu̅ a luy in ſa vie del aſſent del plaintife: quel caſe eſt cite in 14. Hen. 8. 26. deſtre adiudge; mes la eſt malement repoꝛt per le Repoꝛter.

Mes

Mes ſi vn fait containe diuers diſtinct et abſolute couenants, ſi aſcun des couenants ſoient alter per addition, interlineation, ou raſure, ceſt miſſeſanz ex poſt facto auoid tout le fait, come eſt tenus in 14. H. 8. 25. 26. car coment q̄ ilz ſont ſeuerall couenāts, vncore neſt forsq̄ vn fait. 3. H. 7. 10. 5. ſi 2. ſont lies in vn obligac̄, & puis l' ſeale del vn de eux ē debruſe, ceſt miſſeſance ex poſt facto auoid lentire fait enuers ambideux. Vide le caſe de Matthewſon, Mich. 39. & 40. Eliz. in le 5. part de mes Reports, fol. 23.

Triñ

Trin. 12. Iacobi Regis.

Alexander Powlters caſe.

VN Alexander Powlter de Newmarket in le Countie de Cambridge, de extreme malice et male volunt felleo animo arſe vn meſe in le dit ville, ſur que le pluis part del dit ville fuit arſe et conſume: pur quel offence al Aſſiles de Cambridge in Autumne darreine paſſe il fuit indite et conuict per verdict, & pria ſon Clergie: Et, ſi l auera ſon Clergie ou nemy, fuit le queſtion: Sur que les Juſtices Daſſiſe deuaunt queux il fuit arraigne priſtet aduiſement. Et oze in meſme ceſt Terme touts les Iuſtices Dengliterre fueront aſſemble pur le reſolution de ceſt point: Et, ſur le conſideration de diuers intricate male compile et compoſe ſtatutes, ils fueront in aueruſt le quel il auera ſon Clergie ou nemy: Mes fuit agree per touts, que ceo fuit felonie per le common Ley, come appiert per Britton, fol. 16. & Bracton, fol. & 11. H. 7. fol. 1. Et fuit account in Ley vn haynous et exorbitant felonie: car per leſtatute de Weſtm. 1. cap. 15. eſt declare, que ceux q̃ ſont priſes pur arſon feloniouſment fait, ou pur fauret̃ le ſeale le Roy &c. ou pur Treaſon que touche le Roy meſme, ne ſoyent in nul manner repleuiſables; per que appiert, primerment, que ceo fuit felony al common Ley, et ſecondement, que ceo fuit cy haynous que il ne fuit baileable nient pluis que pur haut Treaſon.

Mes

Alexander Powlters caſe.

Mes vncore fuit reſolue, q̄ pur le graund fauour & reſpect q̄ le ley attribute al gents de S. Eſgliſe, p̄ ceſt felony al common ley le offendor (que ne fuit iſſint diſable que il ne poet eſtre enhable p̄ aſcun diſpenſation q̄ fuit eſtre fait, dēe member de S. Eſgliſe, come ſil fuit blinde &c. ou in reſpect de ſexe, ſ. vn feme, come appiert in 22. Ed. 3. Corone 461.) auera le priuiledge de ſon clergie p̄ le common ley; car le common ley ne deny beneficium clericatus le benefit de ſon Clergie, forſq̄ in certaine caſes: come ſi home ſoit conuict daſcun hereſie il nauera ſon Clergy pur aſcun felony &c. meſme la ley dun Saracen, Jewe, ou auſ Infidel, Grauius eſt enim diuinam quam temporalem lædere maieſtatem; meſme la ley in caſe de haut Treaſon vs̄ le Roy, et de petit Treaſon auxy deuant leſtatute de 25. Ed. 3. cap. 4. Vide 19. H. 6. 47. pur haut Treaſon accord̄: Mes home excommenge p̄ S. Eſgliſe, p̄ aſcun Eccleſiaſt. cauſe, ou vſage p̄ common ley p̄ aſcun felony, pur q̄ il poet aū ſon Clergy, aūa ſon Clergy. Auxy in caſe de Sacriledge home ſerra ouſte d̄ ſon Clergy, come appiert in 20. Ed. 2. tit. Corone 193. 12. Aſſ. pl' 39. 12. Ed. 3. tit. Coron' 120. 22. Ed. 3. ibidē 357. 26. Aſſ. 19. 27. Aſſ. 42. Al common ley inſidiatores viarum & depopulatores agrorum naūont lour Clergie, come appiert p̄ leſtatute de 4. H. 4. cap. 2. Et deuaunt leſtatute de Articulis cleri, cap. 15. ceſty q̄ confeſſe le felony ne puit aū l' priuiledge del Clergy, pur c̄ q̄ il ne puit faire ſ̄ purgation, & conūt q̄ leſtatute ple ſoleūt in caſe de abiuration & dun approuer, vncor̄ les Judges in fauorem Eccleſiæ extend ceo a touts auters confeſſions ſur l' arraignūt del offendor 10. Ed. 3. Coron. 147. 12. Ed. 3. Coron. 117. 27. H. 6. 7. 34. H. 6. 49 7. Ed. 4. 29. 8. Ed. 4. 26. 9. Ed. 4. 28. 13. E. 4. 3. 22. Ed. 4. Coron. 44 15. H. 7. 9. Et Clergie non ſoleūt al ſuit le Roy ſur inditeūt mes ſur approueūt, & al ſuit del party in appeale, 40. Ed. 3. 42. 40. Aſſ. 17. 11. H. 4. 93. Et generaliūt in touts caſes q̄ūt le vie ou aſcun member del offendor, come coup de ſ̄ mayne &c. ne ſoit in ieopdy loffendor aūa ſon Clergie, come in caſe d̄ petit larceny, Stanford 124. a. Iſſint q̄ fuit reſolue q̄ al cōmon ley pur ceſt felony pur arſon des meaſons loffendor aūa le priuiledge de ſon Clergie.

Donques c̄ a veyer ſi ceſt priuiledge ſoit tolle p̄ aſcun ſtatute: Et pur ceo eſt aſcauoire q̄ p̄ leſtatute de 23. H. 8. ca. 1. eſt puruieu, That no perſon or perſons, which ſhall be found guilty for any manner of petite Treaſon, or for wilful murder of malice prepen-

prepenſed,or for robbing of any churches,chappels,or other holy places,or for robbery of any perſō or perſons in their dwelling houſe or dwelling place &c.or for robbing of any perſon or perſons in or neere the hie way,wilful burning of any dwelling houſes or barnes wherin any corne is,or the procurers or abettors of the ſame,be admitted to the benefit of his or their Clergy (ſuch as be within holy orders,that is to ſay,of the orders of Subdeacon or aboue,onely except.) **Iſſint q̄ ceſt ſtatute ouſte le p̄incipal offendors auantdit del p̄iuiledge ō ſon clergy ꝛ lour acceſſories deuāt. Et eſt dēe obſerue, q̄ leſtatute ne dit,** That no perſon or perſons that ſhal vpon his or their arraignment plead Not guiltie,and ſhalbe found guilty, **car donq̄z ceo de ſine force ſerr̄ p̄ſe pur t troū guiltie p verdict, mes les parols ſont,** that no perſon that ſhalbe found guiltie of petite Treaſon &c. **et ceo poit ēe extend cibñ al confeſſion de record (car le court troue luy culpable ſur ſ̄ confeſſion demeſne deuant eux) come al trouer p verdict de xij. Jurors q̄ñ loffendor denie le fact et pleade rien culp. Et le caſe de confeſſion eſt pluis fort caſe, car coñt q̄ il ſoit troue culp. p verdict, vncore poit ēe innocent, et pur ceo il poit aū ſon Clergy al common ley, ꝛ faire ſon purgation, mes ſ̄il ad confeſſe loffence ō record, il naūa ſon Clergy p le common ley, pur ceo q̄ il ne poit faire purgation. quant l' Court troue ſon confeſſion ō record, car in intendemēt del ley il ne poit (enconr̄ ſ̄ expꝛes ꝛ voluntary confeſſion in Court) ēe innocēt:** Confeſſus in iudicio pro iudicato habetur,& quodāmodo ſuo ſententia damnatur. **Et oue ceo accord vn pull in l' dit act de** 23.H.8. **q̄ ad fait ceſty q̄ ad confeſſe le felony, in equipage oue ceſty q̄ eſt adiudge p̄ felony, les pols ō q̄l ſont,** prouided that this Act extend not to giue any benefit to any ſuch perſons,which after their Confeſſion or Iudgement giuen againſt them of or for felony &c. Vide 25. Ed. 3.42.& Stanford 122. c. **Attaindre p confeſſion eſt pluis fort attaindre q̄ puiſt ēe, p̄ le vehemēt p̄ſumption q̄ il ad del verity, car ſerroit abſurdity a dire q̄ il naueī tiel felony fait depuis q̄ le pty m̄ ad ceo confeſſe al deſtruction de luy et de tout ſ̄ offſpring. Et du leſtatute de** 8.H.6.cap.9. **purueu, q̄ ſi le pty grieue recoū p aſſ. ou p action de Trēs, ꝛ troue ſoit p verdict ou in aūt mañ in due forme del ley, q̄ le def. enr̄ oue force ꝛc. q̄ le pl' recoūa treble damaz in tiel caſe ſi l' def. confeſſe laction, ou fait defaut, ou** nihil dicit, **ou plead inſuffic̄ plea, ꝛ ſur demurr̄ iudgm̄t doñ vers luy, in touts ceux caſes ceo eſt vn troū deins leſtatute, car la eſt vn troū p les Jurors, ꝛ aūt troū p les Judges, et**

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quant le def. confeſſe ē &c. lez Judges trouont ſufficiēt matt̄ deuāt eux a doñ Judgmēt. Vide p̄ ceo les Repoꝛts de Serieant Bendloes, q̄ illint fuit pꝛiſe in 6. H. 8. & in 4. & 5. P. & Ma. in bꝛiefe de Erroꝛ, & illint ieo oy le Seignr Dyer vouche vn Judgmēt accoꝛdō in diuꝰs des ditz caſes ſur leſtatut de 8. H. 6. Et p̄ ceo lopinion de Stanford, fol. 125. q̄ in caſe de confeſſion les offendoꝛs in ceux grand & heinous offences aūont lour Clergy neſt pꝛiſe p̄ ley, & conſtant & continual experiēce des Judges in lour Circuits ad ēe al contrary: Auxy ceſt act de 23. H. 8. extend cibñ al appealez & appꝛouemēts cōe al inditemēts: mes vncoꝛe in ceſt ſtatute fuer̄ troue diuꝰs grand defects; car lez ditz offēdoꝛs & lour acceſſoꝛies deuāt puiſſoier̄ aū p vn facile meane & ambage lour clergy nier̄ obſtant ceſt ſtatute, car ſi offendoꝛ auoit ſur ſ̄ arreigneſ̄t eſtre mute, ou ne voilloit directēt rēder (q̄ eſt tout vn) ou voill̄ challēge peꝛemptoꝛy ouſter le nūber d̄ xx. il aūa le pꝛiuiledge del clergie nier̄ obſtāt le puruieu de cē ſtatut̄, car in ceux caſes ilz ne ſ̄ot troue culp. de felony cōe leſtat̄ ple, mes aūa iudgmēt d̄ paine foꝛt et dure p̄ lour contumacy, pur ceo q̄ ils ne voill̄ rēder al ley ne mitt̄ eux mē ſ̄ enq̄ſt: Auxi ſi loffendoꝛ nauoit appeal̄ mes vſt ēe vtlage p̄ alt̄ de eux offences, vnē nient obſtāt ceſt ſtatut̄ il aūa ſ̄ clergy, car il ne fuit troue culp. del felony mes vtlage p̄ ſon default: auxi coñt q̄ le offenꝺ auoit cōmit burglary, vnē il ē fuit ſans robbery, il aūa ſ̄ clergy nient obſtāt cē ſtatut̄, & illit aūont ſes acceſſoꝛies cibñ deuāt cōe aps: et illint qñt al ouſter des acceſſoꝛies deuant de lour Clergy, in toutz lez ditz offēces lez polz ſont (be found guilty) illint q̄ mē lez defects ſont auxy in ceſt clauſe cōe fuit in le foꝛmer.

Apꝛes ē fuit p̄ leſtat̄ de 25. H. 8. cap. 3. oꝛdeine, q̄ recite lact de 23. H. 8. & ouſter puruieu, That if in thoſe caſes the perſon arraigned ſtand mute, or wil not directly anſwer, or challēge aboue the number of 20. ſhal loſe the benefit of his clergy in like maner and forme as if he had directly pleaded &c. and therupon had bin found guilty according to the lawes of the land: p̄ q̄ux polz lētention des feloꝛs de lact appiert, q̄ ceſty q̄ eſt troue culpable daſcuns des dits offences (q̄ extend cibñ al confeſſiō cōe al verdit) pdera ſon Clergy; et pur ceo coment q̄ lact de 23. H. 8. neſt paz reuiue, vncoē ſont ſufficiēt parolz in lact de 25. H. 8. de ouſter ceſty q̄ eſt troue culp. de ſon Clergie: Et ceo auxy appiert fuit lentention des fealoꝛs del act de 5. & 6. Edw. 6. car ſi lact de 25. Hen. 8. nad extend a ceſty q̄ eſt troue culp. p̄ ꝺict ou confeſſion, ilz ne voillont auer reuiue ceo de ouſter

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le offendor del priuiledge de ſon Clergie ſolement in caſe quant il eſtoit mute, ou ne voille rẽder, ou challenge ouſter xx.& nemy ou il eſt troue culpable per verdict ou confeſſion: Auxy lez parols del act de 5.& 6.E.6.ſont, That the ſaid act of 25.H.8.ſhall remaine and bee in full ſtrength and vertue, in ſuch manner and forme as it did before the making of the act of 1.E.6 et deuaunt meſme lact ſans queſtion ceſtuy que fuit troue culpable per verdict ou confeſſion, fuit ouſte de ſon Clergie. Mes ceſt act de 25.Hen.8. nauoit per aſcun parols in aſcun caſe tolle Clergie del acceſſary deuant, que fuit graund defect, car ſil fuit troue culpable ſolonque 23.Hen.8. cibien laccelloꝛie deuaunt come le principall deuant fuit ouſte de Clergie, mes ſil eſtoit mute, ou nient directment reſponde, ou challenge ouſter xx. in queux caſes le principal fuit ouſte de ſon Clergy p 25.H.8 vncoꝛe in ñ lez caſes laccellary deuant ne fuit ouſte de ſon Clergy: Et ceſt act de 25.H.8. nient-tend my aux appeales ou appꝛouemẽts, mes ſolemẽt aux inditemẽts, car les pols ſont, if any perſon be indicted &c. Fuit ꝓuieu p ñ leſtatute, q̃ ſi aũ ſoit indite p̃ felony p̃ le emblees daſcun biens in aſcun County, & ſur ceo arraigne, ſoit troue culp̃, ou eſtoit mute ſur malice, ou challenge peremptoꝛie ouſter le number de 20. ou ne voille directment reſponder al ley, perdeñ le benefit de lour Clergie, in meſme le maner et foꝛme come ils ſerr̃ ſils ont ẽe indite arraigne & troue culp. in meſme le County ou le robbery, ou burglary fuit fait ou commit, If it ſhal appeare to the Iuſtices, before whom any ſuch felons or robbers be arraigned, by euidẽce giuen before them, or by examination, that the ſame felonies whereupon they be ſo arraigned, had been ſuch robberies or burglaries &c. Wherefore by the ſaid ſtatute they had loſt the benefit of their clergy if they had bin found guilty thereof in the ſame ſhire. Et eſt defect auxy in ceſt bꝛanch, car ceo nextend pas al caſe quant les offendoꝛs pur aſcuns des dits offences ſont bꝛiage ꝛc. auxy nextend pas al acceſſoꝛies deuant in tiels caſes. Et eſt aſcauoir que quãt loffendoꝛ confeſſe lenditement, ou eſtoit mute, ou challenge ouſter le number de 20. coũt que nul euidence poit ẽ done vers luy, vncoꝛe les parols del ſtatute ſont (or by examination) q̃ux parols ount relation quant loffendoꝛ confeſſe loffence, ou eſtoit mute, ou challenge ouſter le number de 20. Donq̃s fuit leſtatut de 1.E.6.ca.12. p quel eſt enact, That no perſon that ſhalbe in due forme of law attainted or conuicted of murder of malice prepẽſed, poyſoning of malice prepẽſed, breaking

king of any houſe by day or night, any perſon being then in the ſame houſe and put in feare or dread, or for robbing of any perſon in or neere the high way, or for felonious ſtealing of horſes, Gueldings or Mares, or for felonious taking of any goods out of any church &c. or being thereof indicted or appealed, and thereupon found guilty by verdict of twelue men, or ſhall confeſſe the ſame vpon his or their arraignement, or will not anſwere directly, or ſtand mute, ſhall not be admitted to haue the benefit of Clergie or Sanctuarie. And that in all other caſes of felony, other then ſuch as are before mentioned, all perſons that ſhall be arraigned and found guilty, or ſhall confeſſe the ſame, or ſtand mute in forme aforeſaid, or will not directly anſwere, ſhall haue the priuiledge of Clergy, or Sanctuarie, as they might haue had before the firſt yeare of King Henry 8. Et ceſt act de 2. E. 6. ad fait diuers graund alterations: car, 1. Per ceſt generall clauſe Clergie fuit reſtore a ceſty que offend in ariſon de meaſons et aux ſes acceſſories deuant. 2. Touts acceſſories deuaunt in caſe petit d Treaſon, Murder, Burglary, ou auters offences mention in le dit act de 23. Hen. 8. fuer reſtore a lour Clergie per le dit generall clauſe, & pur ceo ilz erront queux teignont que laccеſſory al burglary ſr ouſte de Clergie, car a ceſt temps cheſcun acceſſory in burglary cibien deuant come apres aueroit ſon Clergy, & ceo appiert per tout le Judgement del Parliament de 2. & 3. Phil. & Mar. per que eſt pruueu q le benefit del Clergy ſer tolle de Benedict Smyth &c. per le murder de Ruſſord ſi le dyt Benedict ſer troue culp. come acceſſory al murder &c. Nota meſme le murder fuit ey barbarous ou heinous que Clergy fuit tolle de luy & auters eſteant forſque acceſſories deuant apres loffence commit, vide Dyer 3. & 4 Phil. & Mar. 133 ou mẽtion eſt fait q il fuit ouſte de ſon Clergy per meſme lact de 2. & 3. Ph. & Mar. ql proue que ſi meſme lact nad eſte fait, il puit auer ſon Clergy. 3. Per ceſt generall clauſe Clergie fuit reſtore al haynous offendors in piracy ſur le mere quel fuit tolle per leſtatute de 28. Hen. 8 cap. 15. & in dyuers auters cauſes. 4. Les pols concernant attaindre del infreinder des meaſons ſoleñt ſr repugnant & trope abſurde ſinon q ils ſont ſupply p reaſonable intendment & bon conſtructiõ, car, cõe Stamford 126. a. bien obſerue, ſi aſcũ enfreint aſcũ meaſõ p nuit ſans intent a cõmitter felony, neſt burglary ne felony (& p ceo ceux pols, oue felonious intent, fault,) auxy ſil infreint meaſon in le iour, conſt q il ad feloni intẽt,

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ſil aſpoꝛt riens ceo neſt felony, & pur ceo in ceſt caſe ceux paꝛols, et emblee biens feloniouſment, ſont deſiree, & vncoꝛe Stanford tient que ceux generall & incertaine paꝛols doient ẽe ſupply oue vn intendment, ceſtaſcauoir, ou il eſt attaint & conuict de infreinder del meaſon in le nuit burgulariter, ou del infreinder del meaſon in le iour, & de embleer des biens la dedeins; mes quant al caſe de burglary, ceſt act ad fait alteration pluis ſtrict que 23. Hen. 8. auoit, car ceſt act tolle Clergie in caſe de Burglary ſans aſcun embleer des biens 5. Ceſt act de 1. E. 6. adde choſe nient materiall, & omit choſe mult materiall, que fuit compꝛiſe in lacts de 23. & 25. Hen. 8. car ceo tolle Clergie a ceſty que poꝛſon auter de malice pꝛepenſe, que ſans queſtion eſt wilful murder, & pur ceo loffendoꝛ fuit ouſte de Clergie per les acts de 23. & 25. H. 8. & ceo omit le heinous offence de arſer des meaſons, & vncoꝛ tolle Clergy a ceſt que commit burglary coñt que il ne impaire la meaſon foꝛſque in petit ou riens, & implicite allow Clergie a ceſty que arſe tout le meaſon, & non ſolement vn meaſon mes le greinder part del vill', come fuit in le caſ oꝛe in queſtion. 6. Eſt grand defect in ceſt act in le clauſe de ouſter les offendoꝛs de clergy, car ceo nextẽd pas ou le offendoꝛ challenge ouſter le number de 20. que fuit include in lact de 25. H. 8. mes ceo eſt remedy p le reuiuer del act de 25. H. 8. per leſtatute de 5. & 6. E. 6. come appiereꝛa apꝛes. 7. La eſt grand repugnancie in le dit general clauſe, car nient obſtant ceo, ſi aſcun offendoꝛ que eſt dẽe reſtoꝛe al pꝛiuiledge de ſ̃ Clergy dont il fuit ouſte per aſcun foꝛmer ſtatute, challenge ouſter le nũber de xx. ou ſil ſoit vtlage pur meſme loffence il ne ſerꝫ reſtoꝛe a ſon Clergie, car ceſt clauſe nextend pas foꝛſque ou le offendoꝛ eſt troue culp̃ p verdict ou per confeſſion, ou eſtoit mute, & ou ne voit directñt rñder. 8. Ceſty que commit Robbery ou Burglary in vn County & aſpoꝛt les biens emblees in auꝫ county ꝛc. que fuit ouſte de ſon Clergy per 25. H. 8. fuit reſtoꝛe a ſon Clergy per ceux generall paꝛols. 9. Ceſt act extend a touts perſons, ſ. cibiẽ a ceux queux ſont deins holy oꝛders q̃ux fueꝫ except hoꝛs de 23. H. 8. come al auters layꝭ gents. 10. Ceſt act de 1. E. 6. in auters points ad ſupply aſẽ des defects q̃ux fuerõt in les foꝛmer ſtatutes concernant loffences mention in ih cẽy act; car 1. les auters ſtatutes nextẽdont my, come appiert deuant, ou loffendoꝛ fuit vtlage p̃ aſẽ des offences menẽ in

eux, mes ceſt act extend aux homes vtlages, attaint per battell, abiure, attaint per parliament, car le parolls ſont, if any hereafter ſhal in due forme of law be attainted, queux parols extendont a cheſcun manner dattainder: 2. ceſt act extend per expreſſe parols al cas del confeſſion, car les prochein parols de ceſt act ſont, or conuict, & ceo eſt per verdit ou confeſſion; iſſint le clauſe pur ouſter del Clergie eſt mieux penne quaunt a ceux points, que le general clauſe pur reſtitution del Clergie, come appiert deuaunt. Et eſt dēe obſerue que ceſt act de 1.E.6. extend cibien al appeals et approuements, come aux inditements. Et puis leſtatute de 5.& 6.E.6.cap.10. fuit fait, le title de que fuit, That ſuch as robbe in one ſhire and flie into another, ſhall not haue the benefit of Clergie: ceſt act 1, recite le dit act de 25.Hen.8. que recite lauter act de 23.Hen.8. & in queux mention eſt fait des arſon de meaſons, & ouſter le additiō que lact de 25.H. 8. fait, & auxy le vraunch concernant le embleer des biens in vn countie et aſporter le latrocine in auter county: Et ouſter meliue lact de 5. &6.E.6. recite le purueu del dit act de 1.E.6.de verbo in verbum, (in que lomiſſion de arſon des meaſons appiert) & auxy le dit general & beneficiall vranch pur Clergie del act de 1.E.6. & donques apres le recitall de ceux 3. Statutes, les parols del act de 5.&6.E.6. ſont, By reaſon wherof diuers and many perſons, ſince the ſaid firſt yere, haue committed ſuch robberies and burglaries, and after haue beene taken with the manner in another County, and there indicted, arraigned, and found guilty, haue had and enioyed their Clergie, which they could not haue had if the ſaid Statute of 25.Henry 8.had ſtood in force; for redreſſe whereof, be it enacted, that the ſaid act made in the ſaid fiue and twentie yere touching putting of ſuch offendors from their Clergie, & euery article, clauſe, and ſentence contained in the ſame touching Clergie, ſhall from henceforth, touching ſuch offences from henceforth to be committed and done, ſtand, remaine, and bee in full ſtrength and vertue, in ſuch maner and forme as it did before the making of the ſaid act of 1.E.6. any clauſe, article, or ſentence, cōpriſed in the ſaid act made in the ſaid firſt yeare, to the contrary notwithſtanding. Et tout le ſcruple de ceſt act conſiſt ſur ceux parols del corps del act de 5.& 6.E.6. et dun ſemble que Stanford fait libro 2.cap.43.fol.128.2. que lact de 25.Hen.8. nē reuiue in tout eins ſolement in ceſt part que concerne lembleer

bleer des biens in vn County & alpoꝛt̄ in aut̄ Countie, per reaſon de ceſt parols (ſuch offendors &c. and ſuch offences &c.) que ad relation ſolement a ceſty offendoꝛ que eſt expꝛes deuant in meſme lact: A ceo fuer̄ adde per auters 2. auters obiections, 1. que le title ou ſtile del act eſt particuler, ceſtaſcauoir, That ſuch as robbe in one Countie and flie into another ſhall not haue benefit of Clergy, per que lentent des feaſoꝛs del act appiert a quel choſe le dit act extender, & ceo pꝛoue le caſe inter Stradling & Morgan, Plo. Com. 203. b. ou le perticul' ſtile del act de 7. E. 6. conten̄at le reuenues le roy limit & qualifie les generall parols del coꝛps del act, ceſtaſcauoir (any receiuor) de extender ſolement al receiuoꝛs le Roy ſolonq̄ le title del act; auter obiection fuit fait per aſcũs, que admittant que le dit act de 5. & 6. E. 6. ad reuiue tout lact de 25 H. 8 vncoꝛe intant que le dit act de 23. H. 8. ne fuit reuiue, le dit Alexander Powlter in le caſe oꝛe in queſtiõ auera ſon clergie, car come ad eſte dit, lact de 23. H. 8. extend ſolement q̄n̄t loffendoꝛ eſt troue culp̄ (que eſt noſtre caſe) & lact de 25. H. 8. recite le dit act de 23. H. 8. & fait addition quant loffendoꝛ eſtoit mute, ou ne voille reſponder, ou challenge ouſter l' nũber de xx. iſſint que lact de 25. H. 8. nextend pas al caſe ou loffendoꝛ eſt troue culp̄ per verdit ou per confeſſion pur ceo que laſtatute de 23. H. 8. ad puruieu pur ceo, & intant que lez generall parols de le dit act de 1. E. 6. ad tolle le foꝛce (foꝛſque in vn ſpeciall caſe come eſt auantdit) des ambideux ſtatutes de 23. & 25. H. 8. & lact de 5. & 6. E. 6. ad reuiue ſoleñt lact de 25. H. 8. a ceſt cauſe in le caſe oꝛe in queſtion le benefit de Clergy neſt pas tolle. Encõter que fuit argue per auters des Juſtices. Pꝛimermẽt que leſtatute de 5. & 6. E. 6. ad reuiue lentier act de 25. Hen. 8. concernant Clergy. Secondment que lact de 25. Hen. 8. ad tolle le benefit del Clergy de ceſty que eſt troue culp. de arſon de meaſon per verdit ou per confeſſion. Tiercemant ils citont vn iudgement in parliament a pꝛouer ceo. Quartment ils confirmont ceo per vn conſtant opinion & pꝛoceeding des Juſtices dalliles in lour circuits.

¶ Quaunt al pꝛimer fuit dit, que ceſt relatiue (ſuch) refiert pluis toſt al matter pꝛecedent que al particuler foꝛme des parols. & au fine que le remedie intend per les feaſoꝛs del act ſer̄ de cy graund extent come le maladie & miſchiefe fuit, (ſuch) ſerra pꝛiſe ſuch in miſchiefe and ſuch in inconuenience, & al (ſuch) come in foꝛme des parols

eſt mention deuant: Et pur ceo leſtatute de W.2.cap.5. eſt. Cum quis ius præſentandi non habens præſentauerit ad aliquam Eccleſiã &c. per quod hæredes infra ætatem exiſtentes per fraudem & negligentiã cuſtodum &c. Statutum eſt quod huiuſmodi præſentationes &c. non ſint huiuſmodi rectis hæredibus &c. ita præiudiciales: & le caſe in le 44.E.3.21. que inſãt auoit auowſon p diſtent & auoid vſurpatiõ ſans auerment que il fuit in gard, pur ceo que eſt parol (huiuſmodi) i. ſuch, ſerr̃ prĳe ſuch in miſchiefe, ceſtaſcauoir, a prouider p̃ tout le miſchiefe, & ayant laduowſon per diſcent (que fuit le ſubſtance) non referr le quel il fuit in gard ou nemy: Iſſint leſtatute de W.2 cap.12. le preamble dit, per appellatores nihil habentes &c. & le corps del act eſt, Statutũ eſt quod cum aliquis ſic appellatus &c. vnd̃ ſans q̃ſtion ſi lappellor ſoit ſufficiẽt, niẽt obſtãt ceſt pol (ſi) leſtatut extend a ceo: Et ou leſtatut de 21.Hen.8.cap.15. parle in le preamble de leaſes faits pur graund fines for the Incomes &c. & le puieu eſt, That all ſuch Termors ſhal or may falſifie, ad ẽe touts foits prĳe que leſtatute extend a leaſes faits ou pur petit fine, ou pur nul fine: Iſſint le preamble del ſtatute de 32.H.8.ca.33. parle de diſſeiſins oue ſtrength, & le corps eſt, that the dying ſeiſed of any ſuch diſſeiſor &c. ceo extend al diſſeiſin ſans force, car ſuch in miſchiefe: et iſſint eſt tenus in 4.& 5.Phil.& Mar. Dyer 219. Et iſſint in pluſors auters caſes. Et quant al ſtile ou title del act, neſt pas aſcun parcell del act, & ancient ſtatutes fuer̃ ſans aſcun title, & pluſors acts ſont de greinder extent que le title eſt, come leſtatut de vſes Anno 27.Hen.8.cap.10. le title eſt An act expreſſing an order for vſes and willes, et vncore le corps del act extend aux Iointures et dowers des femes. Et iſſint in ceſt caſe ils arguont que le corps del act de 5.& 6.E.6. fuit pluis ſpacious que le title, mes nemy pluis ſpacious que le ſamble, car le preamble extend a 2. miſchiefes, vn implicitè p recital, & lauter explicite p expreſſe parols; implicite per le recitall de 23.& 25.Hen.8. quel extend al arſon de meaſons, & per recitall de 1.E.6. in quel fuit le omiſſion del arſon des meaſons (que fuit penſe deſtre per negligence del eſcrier, car eſt pluis haynous offence que diuers auters que la ſont expreſſe,) explicite de Robbery &c. in vn Countie & aſpor̃ in auter County; donques quant les parols ſont, for redreſſe whereof be it enacted, ceo ne referre ſolement al darreine que fuit offence de Commiſſion, mez auxy al omiſſion del offence de arſon des meaſons in leſtatute de 1.E.6.

et

et donques cẽ parol (ſuch) auera reference al arſon des meaſons cibien in leſtatute de 23. H.8. come in le dit act de 25. H.8. ambideux queux ſont deuaunt recite in meſme lact de 5. & 6. Ed. 6. Auter reaſon fuit adde, que le purueu de lact de 5. & 6. Ed. 6. ad vn double ſentence, s. That the ſaid Act of 25. H.8. touching the putting of ſuch offendors from their Clergy, ſi ceo ſerr̃ admitte dextender ſolemẽt al robbery in vn coũtie ⁊ aſporter in auter, vncore la eſt auter ſentence in meſme lact, and euery article, clauſe, and ſentence contained in the ſame touching Clergie, ſhall from henceforth touching ſuch offences remaine and be in ful ſtrength and vertue. Et fuit argue que ceſt darrein clauſe extendeſ al tout le act de 25. H.8. pur diuers reaſons: 1. pur ceo q̃ le primer ſentence auoit eſtre ſufficiẽt pur le robbery in vn county et laſporter in auter, et donques ceſt darreine ſentence que ad pluis generall parols, s. and euery article, clauſe, and ſentence &c. ſerr̃ in vaine et ſuperfluous, et Viperina eſt expoſitio quæ corrodit viſcera textus: 2. la ne fuit forſque vn clauſe ou ſentence concernant Robberie in lun County et laſporter in auter, et ceſt branch de 5. & 6. Ed. 6 dit, and all and euery article, clauſe, and ſentence concerning Clergie, iſſint que ſerr̃ dure que ceux generall parols ſerr̃ reſtraine a vn particular clauſe et ſentence, mes le bone expoſiter fait cheſcun ſentence dauer ſon operation, a ſuppreſſer touts les miſchiefs deuant le dit act, et principalmẽt ceux q̃ ſont ſpecifie in meſme lact (come eſt in le caſe in queſtion) ⁊ coment q̃ les darreine parols de ceſt ſentence ſoient, ſhal from henceforth concerning ſuch offences remaine in force, in bone conſtruction ceux parols (ſuch offẽces) couient dauer reference a tiels offences come ſont contain in alcũ article, clauſe, ou ſentence del act de 23. H.8. touching Clergie: Et per ceſt conſtructiõ tiel haynous offente ne paſſera in effect oue impunitie, ⁊ malefactors ne ſerr̃ incourage a arſer non ſolement meaſons mes Villes ⁊ Cities, ⁊ paſſer̃ oue vn petit arſer in ſon maine, ⁊ touts les ſtatutes per cẽ conſtruction eſtoyer̃ bien enſemble et ſerr̃ bien reconcile, et accorder̃ que conſtant et continuall experience des Judges. Et eſt frequent in noſtre liures que penal Statutes ont eſte prize per intendment, au fine q̃ ilz ne ſerr̃ illuſorie, mes prendra effect ſolonꝫ lexpreſſe intention des feaſors del act: ⁊ pur ceo fuit purueu per leſtatute de 27. Ed. 3. cap. 1. que ceſty que attreit aleun al court de Rome in plea que puit ẽe termine in Court le Roy, ou de choſes dont Judgemẽt eſt done in le

Court

Court le Roy, ou queux sont in ascun auter Court a defeater ou impeacher les Judgements done in le Court le Roy, auerant iour conteinant le space de 2. moys &c. et sils ne veignont a mesme le iour in proper person, ilz sōt mise hors de protection &c. vn question fuit moue in 30.E.3.11. (que fuit deins 3. ans apres le fesans de cest act) si le offendor ne fait default mes appiert & plead & soit condemne, sil auera le hault & penal Judgement de Præmunire done per le dyt act; mes puis in 39.E.3.fo.7. Judgement fuit done vers lenesque de Chichester que appiert, que il serōt mise hors de protection &c. & vncore le letter del Statute est, & sils ne veignont a mesme le iour &c. ils serōt mise hors de protection, à fortiori, quant il appiert & riens dyt autiel Judgement serōt done, car in owel mischiefe, a multo fortiori quant le defendant in tiel case appiert & plead, et soit troue culp. il auera Judgement sur le dit Statute, come est adiudge in Forebyes case in 44.E.3.36.a.& b. & vncore ceo est hors des parols del act que parle solement de default, Et infinite Judgements sur lestatute de 27.E.3. auoient ēe done accordant, et pur ceo qui hæret in litera hæret in Cortice; quel case fuit dyt ad greinder defect des parols que le case ore in question: per lestatute de 8.Hen.6.cap.12. est ordeine que si ascun record ou ascun parcell de cel &c. soit voluntarement import, retreit &c. a cause de quel ascun Judgement soit reuers, que tiel embleer, importer, retraher & auoyder &c. soient adiudge pur felons, Et in 2.R.3.f.19. action de det fuit port vers J. B. ou in veritie son nosme fuit W. B. proces continue tanque il fuit vtlage, & loriginall fuit rase & les 3. cap. & faits W. B. et les rolles rases & fait acord, cest act fuit resolue deste felony per touts les Justices, et vncore per ceo lutlagarie fuit fait bone &c. Jlint per lestatute de 25.E.3. le tuer de son Maister est adiudge Treason & ceo extend per construction al Mistris, come est tenus in 19.Hen.6.47. et in mults auters cases penal Statutes auoient ēe prise p intendent, a remedier le mischiefe, in aduancemēt de Justice & in suppression dez crimes et hainous offences.

¶ Quant al 2. lestatute de 25.Hen.8. ad tolle Clergie de cesty que est troue culpable de arson dun meason, car le dit act de 25.Hen.8. tolle le Clergie de cesty que in tiel case sur son arraignement estoit mute, ou ne voet rāder, ou challenge ouster le number de 20. in like manner and forme

forme as if he were found guilty after the laws of the land, queux ſont affirmatiue parols & tolle le Clergy a ceſty que ẽ troue culpable ſolonque les leys del terre.

¶ Quant al 3. point, les feaſors del Statute de 4. & 5. Phil. & Marie cap. 4. ſciant que per le dit act de 25. Henr. 8. que fuit reuiue per leſtatute de 5. & 6. E. 6. Clergy fuit tolle p̃ principal offendor in le dit caſe del arſon dñ meaſon, & nemy del alcun acceſſorie, ount puruieu que laccеſſorie deuant ſerr̃ in tiel caſe ouſte de ſon Clergie; que fuit priſe per diuers des Juſtices dẽe bone interpretation per tout le Parliament de touts les dits acts concernant ceſt matter, car ſi le principall aueroit ſon Clergie, ſerr̃ abſurd et ne vnques viewe in tout le ley q̃ le Clergy ſerr̃ tolle del acceſſory tantũ & layſe le principall offendor alarge dauer ſon Clergie: 2. ſerr̃ in vaine per le dit act de 4. & 5. Phil. & Mar. a toller le Clergie del acceſſory deuant & layſer le principall dauer ſon Clergie, car ſi principall ad ſon Clergy deuant Judgemẽt, le acceſſorie ne ſerr̃ arraigne come eſt tenus in le 4. part de mes Reports fol 43. b. 44. a. Nota bene Lecteur le dit act de 4. & 5. Ph. & Ma. tolle le Clergy de ceſty que eſt acceſſory deuaunt le offence del arſer dun meaſon &c. extend̃ ou le acceſſory eſt vtlage, ou auterment attaint ou conuict, ou eſtoiet mute, ou denie a rñder directment, ou challenge ouſter le number de xx. que eſt bien & perfect quant a ceo, mes ceſt act ne extẽd a cheſcun burglary ou infreinder des meaſons &c. mes ſolement quant robbery eſt commit.

¶ Quant al 4. point, ſur conference ewe oue dyuers Clerks Daſſiſe et auters ancient Clerks, et ſur le viewe de diuers et mults Recors, appiert q̃ les principals et acceſſories deuant auoient ẽe ouſte de ſon Clergy in caſe de arſer des meaſons; car lour manner dentre quant clergy ne giſt, eſt a dire cul. ſuſ. per Coll: mes quant Clergy giſt, donques lentrie eſt, petit librum &c. Et touts les preſidents forſque vn (et ceo fuit deuant Sir Iohn Puckering & ſon compaignõ Juſtices daſſiſe in le County de Eſſex) fuer̃ cul. ſuſ. per col-ſum, ſans ceux parols petit libr'. Sur tout quel matter & ſur le viewe des dits preſidents fuit reſolue, q̃ le dit offendor in le caſe ore in queſtion ſerr̃ ouſte de ſon Clergie: & accordãt a ceux darreine Aſſiſes in le county de Cãbridge (conſt q̃ lof-fendor biẽ puit leer) iudgemẽt fuit done ſur luy & execution fait accordant, & order done que il ſerr̃ pende in chaines pres le lieu ou il offend, & ita fuit.

Nota

Alexander Powlters caſe.

Nota Lecteur, quant al Burglary & Robbery in meaſons &c. intant que doubts & queſtions poient ſurder ſur ceo que ad ẽe dit, ieo aye penſe ceo neceſſary a faire (per voy de appendix) aſcun briefe explanation de ceo & des aſcuns auters choſes, al intent que del vn part graund offences ne paſſen oue impunitie, ne del auter part le ſubiect deprriue del priuiledge que la ley a luy done.

Per le ſtatute de 18. Eliz. cap. 7. eſt puruieu, That if any perſon ſhal commit any felonious burglary, and ſhalbe found guilty by verdit, or ſhalbe outlawed, or vpon his arraignment ſhal confeſſe the ſame, in euery ſuch caſe, il ſerr' ouſte de ſon clergy: per ceſt act eſt communement tenus, et iſſint publie in aſcun liures imprimes, q̃ nul auera Clergie q̃ commit aſcun felonious Burglarie. Et ceo eſt voier ſil ſoit bien intendue & p̃ ceo le ſecret de ceo eſt digne de voſtre apprehenſion & ſcience, car ceſt ſtatute de 18. Eliz. extend ſolement, al 3. cauſes, ceſtaſcauoir, ou le offendor eſt vtlag̃, ou il ſoit troue culp̃ per v̈dit, ou confeſſe ceo: Et pur ceo, ſi aſcun ſoit indite de burglary generalment al common ley (ſans riens ſpeciall & ſans aſcun allegation ſolonque certaine ſtatutes in tiel caſe puruieu) ſi le offendor ſoit vtlage, ou ſi ſur rien culp. plead il ſoit troue culp̃ p verdit, ou ſil confeſſe ceo, il ſerr̃ ouſte del priuiledge del Clergy per ceſt Statute, mes ſil ſoit arraigne ſur tiel generall inditement & eſtoit mute, ou ne voille reſponder, ou challenge ouſter le number de xx. in tiels caſes ſur tiel inditement il auera ſon Clergie: Et pur ceo ſerra ſagement fait que lenditement comprehendeſ̃ ſolonque leſtatutes de 23. Hen. 8. ca. 1. & 1. E. 6. ca. 12. que aſcun perſon fuit in le meſe & miſe in pauor &c. car in tiel caſe meſme lact ouſte luy de ſon Clergy, ou ſolonque leſtatute de 5. E. 6. cap. 9. le owner, ſa feme, ou childzen eſteant dormant ou waking, car ſi aſcun tiel eſpeciall matter ſoit conteine in lenditem̃t, donques ſi loffendor eſtoit mute, ou ne voille direct̃m̃t reſponder, ou challenge ouſter le number de xx. le offendor ſ̃t ouſte de ſon Clergy. Mes auxy les dits acts de 1. & 5. E. 6. ſoient neceſſary dẽe explaine, ceſtaſcauoir, le act de 1. E. 6. ca. 12. doiet ẽe expound, come ad ẽe deuant, & com̃t que ceſt act extend al ſingle burglary ſans robberie, vncore ceo requiert que aſcñ parſon ſoit adoñqs in la meſe q̃ ſoit miſe in pauor, car ſi le party fuit la & ne miſe in pauor, come ſil ſoit dormant, ou awake, ou in auter part del meaſon, & ne miſe in pauour, donques nient obſtant tiel burglarie il auera ſon

Clergie

Clergie nient obstant lestatute de 23. Hen. 8. que conioyne robberie oue burglarie in tiel case, & lestatute de 1. E. 6. ca. 12. que extend al single burglarie, mes ambydeux agreont que le person doit ẽe mise in pauor. Et le dit act auxy de 5. Ed. 6. cap. 9. est digne de expositiõ, car primerint ceo conioine robbery oue burglary, issint que si loffendor enfreint le meason in le nute oue felonius intent saums riens prender, coment que le person soit mise in pauor, uncore il auera son Clergy 2. cest act extend solement quant loffendor est troue culp. del felony, et nemy quaunt le offendor est vtlage, ou estoit mute, ou ne voille responder, ou challenge ouster le nũber de 20. & pur ceo le pluis suer voy est en lenditemẽt a pursuer lestatute de 1. E. 6. ca. 12. car ceo quant al burglary est le pluis suer & compleat ley, quant al founder dun inditement de burglary.

Mes tout ceo que auoit ẽe dit extend al principal offendors in burglarie, & est requisite q̃ al. chose ler dit in queux cases les accessories in cest offence aueront lour Clergy et in queux nemy: lestatute que ouste le priuiledge del Clergy in cest & diuers auters cases est le dit act de 4. & 5. Ph. & M. car lact de 23. Henr. 8. que denie Clergie al accessorie deuant, est (come ad ẽe dit) tolle quant a ceo per le dit general clause de 1. E. 6. et lact de 18. Eliz. nextend forsque a principall. Et pur ceo les parols del dit act de 4 & 5. Phil. & Mar. sont dẽe consider, & ils quant a cest purpose sont, All and euerie person and persons that shall maliciously commaunde, hier, or councell any person or persons, to doe any robberie in any dwelling house or houses, perdra le benefit de son Clergie, Et de tiel effect fuit lestatute de 23. Hen. 8. cap. 1. & lestatute de 25. Hen. 8. extend solement al principal, per que appiert que si le commandement soit a faire ascun felony & robbery des biens, q̃ tiel accessory deuant auera son Clergy. Vide Stanford li. 1. ca. 24. pur queux auters felonies burglary poit ẽe commit.

Mes lay sonus nous burglary, que doit ẽe fait in l'nuit, & veiomus in queux cases home serra ouste de son Clergie quant il infreint ascun dwelling house in le iour. 1. Sur lez statutes de 23. Hen. 8. 25. Hen. 8. 1. E. 6. ca. 12. & 5. & 6. E. 6. c. 9. est clere, q̃ couient ẽe actuel felony fait ouster le infriender del meason in le iour, car infreinder del meason solement in

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le iour, conſt que ſuit oue felonious intent ſans tiens ſ̄nder neſt felony, & pur ceo ne beſoigne aſcun Clergy in le caſe. 2. Sur les dits Statutes de 23. & 25. H.8. couient adonques ẽ le owner, ſa feme, ou aſcun de ſes childzen ou ſeruants la & miſe in pauoꝛ, & per 1. E.6. cap. 12. aſcun perſon couient ẽ in le meſe & miſe in pauoꝛ, & per 5. & 6. E.6. cap. 9. ſi le owner, feme, ou aſcun de ſes infants ou ſeruant ſoient in aſcun part del meaſon ſleeping ou waking, & tout ſes auters points concernant lattaindze, conuiction, eſtoiant mute &c. in caſe de Burglarie extend auxy al Robbery in vn dwelling houſe in le iour, et ceſty que robbe aſcun perſon in aſcun booth ou tent in aſcun Faire ou Market, le owner, ſa Feme, Childzen, ou Seruants, adonques la eſteant ſleeping ou awake, ſerr̄ ouſte de ſon Clergy per leſtatute de 1. E.6. cap. 12. & 5. & 6. E.6. cap. 9. Mes 2. choſes in caſe de robbery in vn dwelling houſe in le iour ſont dẽe obſerue. Nul de ceux Statutes ouſta le party de ſon Clergie in caſe de Robberie in vn dwelling houſe in le iour foꝛſque in deux caſes. 1. Si aſcun perſon ſoit miſe in pauoꝛ ſur leſtatute de 1. E.6. cap. 12. & auters Statutes deuant. 2. Si le owner, ſa feme, ſes Childzen, ou Seruants ſoient donques in auter part de meſme le meaſon, coment que ils ne fuer̄ miſe in pauoꝛ, loffẽdoꝛ serr̄ ouſte de clergie per leſtatute de 5. & 6. E.6. cap. 9. mes ſi eſtranger ſoit la per licence del owner, le partie offendoꝛ auer̄ ſon Clergie, car hoꝛs des parols, & de tiel opinion eſt Stamf. 129. b. que vouch lopinion de touts les Juſtices accoꝛdant. Mes doubt fuit conceiue ſur ceux Statutes ſi aſcun in le iour ad infreint vn outhouſe, come Barne, Stable, &c. ſi ceo ſerr̄ dit quant a ouſter loffendoꝛ de ſon Clergy vn dwelling houſe: Et puis leſtatute de 39. El. ca. 15 fuit fait, p quel eſt enact que ceſty que robbeth al value de v. s. in aſcun dwelling houſe ou outhouſe in le iour, coment que nul perſon fuit la deins ceo, ſ̄r ouſte de Clergie. Et eſt aſcauoir que nul des dits Statutes extendont al aſcun acceſſoꝛie deuant le robberie in vn meſe in le iour, foꝛſque ſolemẽt (come ſouent ad ẽe dit) leſtatute de 23. Hen. 8. & leſtatute de 4. & 5. Phil. & Mar. & leſtat de 23. H.8. quant a ceſt point eſt tolle per leſtatut de 1. E.6. cap. 12. Donques eſt a veier in queux caſes laceſſoꝛie deuant auera ſon Clergie, & in queux nemy. Et pur ceo le dit act de

4. & 5.

4.& 5.Phil.& Mar. eſt dẽe arrere reuiewe & conſider quaunt a ceſt poynt,car in caſe ou le Clergie eſt tolle de principall in caſe de robbing in aſcun dwelling houſe in le iour deuant le dit act de 4.& 5. Phil.& Mar. in tiels caſes le Clergie eſt tolle del acceſſory deuant p leſtatute de 4.& 5. Phil. & Mar. Mes 1. ceſt act nextend al acceſſories deuant in caſe de Robbing in vn boothe ou tent, ſoit ceo in le iour ou nuit, car ceux ne ſont eſteeme in ley pur vn dwelling houſe, come leſtatute de 4.& 5.Phil.& Mar. parle, et come bien appiert in le recitall de 5.& 6.E.6.cap.9. Auxi leſtatute de 4.& 5.Phil.& Mar. nextend my al offence deins lact de 39.Eliz. que fuit fait long temps puis le act de 4.& 5.Phil.& Mar.et lact meſme de 39.Eliz.tolle Clergie del principall Offendor ſolement. Et vous prendres ceo pur vn generall rule, que cheſcun Act que tolle Clergie del principall & parle riens del acceſſory,que lacceſſories cibien deuant come apres aueront lour Clergy, come fuit tenus per touts les Juſtices 1.Mar.fol.99.Dyer. Auter generall rule eſt, In touts caſes ou home eſt ouſte per aſcun Statute pur aſcun offence del benefit de ſon Clergie,meſm̃ loffence couient eſte conteine in lenditem̃t ou appeale,in tiel manner et forme et oue meſme les circumſtances come eſt conteine in leſtatute, ou autrement loffendor auera ſon Clergie, pur ceo que leſtatute, que ouſte luy de ſon Clergie nient eſteant purſue,le offendor eſt layſe al common ley: pur example, ſur le dit act de 4.& 5. Phil.& Mar. les parols ſont, All and euery perſon & perſons that ſhall malicioully command, hire,or counſell any perſon to commit or doe any petit treaſon, wilfull Murder, or to doe any Robbery in any dwelling houſe, &c. or wilfully to burne a dwelling houſe &c. Et ſur ceo le caſe in Anno 2.Reginæ Eliz.Dier 183.fuit,que home eſt indite de Robbery dun auter in ſon manſion houſe,il eſteant in le dit meaſon & miſe in pauor,& vn auter eſt indite pur ceo que il felonioulment deuant le dit Robbery procura & counſell le principall de committer ceſt robberie, in quel indictment del acceſſarie ceſt paroll (malicioulment) fuit omit; Et per lopinion de touts les Juſtices Aſſiſe en lour aſſembly,excepte le Chiefe Iuſtice & A. Browne, pur default de ceſt paroll (malicioulment) en lenditement le partie aueroit ſon Clergie, pur ceo que les parols del dit Statute de 4. & 5. Phil.& Mar. ne fueront purſue: Auxi in 18. Eliz. vn Seruant del

Alexander Powlters caſe.

Dame Laxton de Londres fuit indite pur procurement felonioulment del Robbery de ſon Maiſtres per vn Crompton, mes en lendictment fault Conſuluit, Conduxit, vel Præcepit, & auxi malicioulment, & ideo Clergie fuit allow a luy apres Judgement per opinionem Iuſticiariorum.

Mich.

Mich. 12. Iacobi Regis.

Metcalfes caſe.

Dod & auters port briefe de account in le common banke vs Metcalfe, & ſur iſſue troue vers luy Judgement done quod computet, & ideo in mia quia non prius computauit. Sur quel Judgement Metcalfe port briefe de Erroꝛ: & ore 2. queſtions fuer moue. 1. Si apres ceſt iudgmt le briefe de erroꝛ giſt ou nemy; Le 2. ſi briefe de Erroꝛ ne giſt ſi le recoꝛd ſoit remoue ou nemy. Et fuit argue del part del pl̃ que le bꝛe de erroꝛ giſt bien, car apres ceſt verdict & iudgement, ſi le pl̃ mozuſt, ou ſi le pl̃ ſoit vn feme & puꝭ ceſt iudgement priſt baron, le briefe nabatera, & iſſint eſt adiudge in 27.E.3.87.a. & oue ceo accoꝛd 14.H.fol.1. ou in briefe de account vers vn come baillie, et ne vnques ꝰ baillie &c. plead, & apres triall vers le defendant, Judgment fuit done quòd def. computet, & puis le pl̃ mozuſt, ſes executoꝛs auoiẽt Scire facias vers le defendant, le q̃l fuit ſeruie, & il ne vient pas per q̃ cap. ad computand' iſſuiſt deuers luy returne a cteine iour, & le pl̃ pꝛia Exegent vs luy & habuit: vide 21.E.3.32. & in 21. E.3.fol.7. In Robert de Holywels caſe eſt adiudge que apres tiel Judgement le pl̃ ne poet ẽe nonſuit, mes nient obſtant ſon default il puit auer cap. ad computand' deins lan, & Scire facias apres lan, & oue ceo accoꝛd 3.H.4.7. & la eſt dit, que per le Judgement que le defendaunt accounta que loꝛiginall eſt determine, 21.Hen.6. fol.26. in John Ferrers caſe; mes

la eſt dit que coment que in tiel caſe le plaintife ne poit eſte nonſuite, uncore le default del plaintife in tiel caſe ſerē bar̄ a luy a touts iours, & iſſint un Judgement la cite in 19.E.3. p Wilby. Vide 18.E.2.tit.Account 123. 21.E.3.7.1.H.7.2.3.H. 4.7.41.E.3.3.a. eſt tenus, que ſi 2. ſoient adiudge daccount, et lun mozuſt, lauter accounta ſole, & le briefe nabatera. Vide 31.E.3.tit.Account, Statham. Vide 34.E.1.tit.Briefe 854. 1.Ed.5 fol. In briefe de Account le defendant fuit agard daccounter, & cap. ad computand' agard, et le def. vient eins per cepi corpus, & les Auditozs fuer̄ a luy aſſignes &c. p̄ que le partie enter in laccoūt & plead un payment per le commandement del pl̄, le pl̄ trauers le cōmandement, et ſur ceo fuer̄ al iſſue, & apres liſſue ioyne le defendant fuit leſſe a mainprize p recogniſance, & puis liſſue fuit diſcontinue per le demiſe le roy E.4. deuant verdit done. Et in ceſt caſe deux points fuer̄ reſolue. 1. Que les mainpernozs fuer̄ diſcharge p le demiſe le Roy. 2. Que apres tiel Judgement done q̄ le defendant computet, touts foits lentre eſt, ideo conſideratū eſt qd' præd' M.computet, & idem M.in mia, quia prius non computauit, quel pue q̄ ceo eſt un iudgement, & p conſequence bō Derroz giſt de ceo.

¶ Mes fuit reſolue p tout le Court, que le briefe de Erroz ſur cē iudgemēt quod computet &c. deuant le final iudgemēt done, ne giſt. Et č appiert p les pols del bō de Erroz, s. Quia in recordo & proceſſu, ac etiā in redditione iudicij loquelæ quæ fuit in curia noſtra corā vob' &c. per breue nr'm int' W. & M. qd' idem M. redderet præfat. W. rationabilē compotū ſuū de quo fuit Receptor denariorū &c. error interuenit manifeſtus ad graue damnū ipſius M. &c. Nos errorem ſi quis fuer' modo debito corrigi, & partibus prædictis plenam & celerem Iuſticiam fieri volētes in hac parte, Vobis mandamus, qd' ſi iudicium inde redditum ſit, tunc recordum & proceſſum loquelæ præd' cum omnibus ea tangentibus &c. nobis &c. mittatis, & hoc breue &c. Et tout le queſtion de ceſt caſe fuit q̄l iudgemēt fuit intend in bō derroz. s. ceo quod defendens computet, ou le darreine iudgement. Et fuit reſolue q̄ nul bō derroz giſt tanqz le darreine iudgemēt ſoit done, et ceo pur diuers reaſons. 1. Quaunt un choſe (dont y ſont diuers degrees & qualities) ſoit indefinitement mention in un Brieue, Count, ou auter Recozd, le principall choſe & pluis digne ſerē intend, come 6. Eliz. Dyer 236. penalty inflict per act de Parliament dēe recouer in aſcun des Courts de recozd del Roigne, ſerē intend des principal

Courts

Courts al Weſtminſter, 20.Hen.6.23. in account ſuppoſant le defendant dẽe ſon receiuer del Feaſt de Saint Michael, ſerr̃ intend le principall Feaſt de Saint Michael larchangell, & nemy de Saint Michael de monte tumbæ, Iſſint 13. H.4 4. 21.H.6.8. 37.H.6.29. ſi le pier & fits ſont dun noſme, ceſtaſcauoir, I. S. ſi I. S. ſoit noſme generalmẽt in briefe, Count, ou auter record, ẽ ſerr̃ intend del pier, car il eſt pluis digne: Iſſint 10.E.4.11. 7.R.2.tit. Barr' 241. home eſt oblige apprower vn choſe, il dit prouer ceo per le pluis principall proofe in ley, & ceo eſt per Jury, iſſint ſi ſoit parle del fee ſerr̃ intend fee ſimple, & ſi de eſcuage, ſerr̃ intend del principall eſcuage, & ceo eſt eſcuage incerteine, Lit.fol.21. Et vide vn notable caſe a cẽ purpoſe in 5.E.2.tit. Reſceit 165. ou le caſe fuit, que in Admeaſurement de paſture vers home et ſa feme Judgement fuit done, q̃ ladmeaſurement ſerra fait, & puis fuit fait in pays & returne in banke 15. Hillar. a quel iour le baron fiſt default, & la feme vient in Court auant le Judgement rendue in le principall, & pria dẽe reſceiue nient obſtãt quod dictum fuit a part' que el fuit venus trope tard apres ladmeſureñt agard que eſt vn Judgement, ad quod dictum fuit per Herle, ceo ne fuit pas Judgement ſur le principall, Et ou leſtatute de W.2.cap.3. eſt, Si vxor ante iudicium venerit &c. ſtatutum debet intelligi de principali iudicio: Iſſint in 22. E.3.tit. Reſceit 139. aſſiſe de mord' vs̃ barõ & feme, laſſiſe fuit agard p̃ default, & laſſiſe reñ touts temps pre defectu iuratorũ & ore la feme pria dẽe reſceiue, & fuit obiect q̃ Judgemẽt fuit done q̃ laſſiſe ſerr̃ priſe, & puis la feme q̃ vient deuant l' final Judgemẽt fuit reſceiue: & oue ẽ accord 17.E.2.ibid.173.& 22. aſſiſ.p.22. aps aſſiſe agard feme fuit receiue, 24.E.3.29. & diuers auꝰ liures accorõ.

2. Les dits pols, ſi iudicium inde redditũ ſit &c. ſont intend nõ ſolemñt de principali iudicio, come appiert deuãt, mes auſi de integro iudicio, s. quant tout le matter deins le originall eſt termine, come in 34.H.6.18. in Humfrey Bohuns caſe in Quare impedit port vers 2. lun plead al iſſue, & lauter confeſſe laction, ſur quel confeſſion Judgment eſt done, & ceſty vers quel Judgement fuit done ſua briefe de Error a remouer le record in banke le Roy: *Priſot* & tota Curia, ceo ne poet ẽe, car le briefe de Error rehercera touts ceux queux ſont parties al originall briefe, & adõques le briefe dit, & ſi iudicium inde redditum ſit tunc recordum illud habeatis, pur quoy ceo prone

que ne poet ẽe deuant que tout le matter ſoit determine: A quel Littleton dit, ſi briefe de treſpaſſe ſoit port vers ij. & lun appiert & plead, iſſint que il ſoit attaint del Treſpaſſe, et Judgement done vers luy, nient obſtant que le matter neſt determine vers lauter: uncore celuy vers que le Judgement fuit done, auera briefe Derrour, & ſerra remoue: *Priſot*, nemy verament, & le contrary que vo⁹ dits fuit ore tard adiudge ciens in le caſe del Seignior Cromwell enuers Cawary et auters: 32.H.6.5.& 6.b. In treſpaſſe per le Seigniour de S. vers vn de ſes auers prile, quant a parcell le defendaunt plead non culp. & quaunt a auter il plead auter plea, ſur que le pl' demurre, & puis iſſue fuit troue pur le pl', ſur que il ad Judgement: uncore il nauera briefe de Errour, tanque tout le matter ſoyt determine. Et le reaſon des dits caſes eſt, que ſi le record ſerra remoue, tanque lentire matter ſoit determine, la ſerra vn failer de droit: cas les Judges del Banke le Roy ne poyent proceeder ſur le matt' que neſt pas termine, et ſur que nul Judgement eſt done, et lentire record ou couient ẽe ou in common banke, ou banke le Roy, auxi loriginal eſt entire, & ne poit ẽe la & icy ſimiliter. 39.Hen.6. tit. Error. 11. Un home iect eins vn briefe de Errour dun Judgement done (lou le Judgement fuit done des principall & des dammages, mes nemy des Cuſtages) per que il fuit reiect, pur ceo que le briefe eſt condit. *Si* iudicium inde redditum ſit. 12. Eliza. Dyer 291. in Fozmedon port per Fitz William vers Copley le dõt ad Judgement per part &c. Et puis le teñ port generall briefe de Errour deuaunt le diſcuſſion del reſidue, et vehementer pria que le record ſerra remoue banco Regis, ſed Curia noluit hoc concedere, deuaunt ceo que lentire matter del Demaund ſoit determine, car auterment ils procedeñ in le plea ſans garrañ, & auxi le briefe derour dit ſi iudicium inde redditum ſit, & ceſt paroll inde va al intier Demaunde. Iſſint in le caſe al barre, le record ne ſerr̃ remoue tanque lentire matter del account ſoit determine & iudicium detur de integro, et ceo ne poet pas eſtre, tanque Judgement ſoit done des arrerages et dammages &c. Ne Curia Domini Regis deficeret in iuſtitia exhibenda, le record ne ſerra remoue tanque lentire matter ſoit determine.

3. Le briefe derrour eſt dẽe intend non ſolement de principali & integro, mes auxy de iudicio grauiter damnoſo. Et quant

quant a ceo eſt aſcauoire, que oꝛiginall bꝛiefe de account nient obſtant le dit agard remaine vndetermined, & ſur ceo le Judgement in le fine ſerra done, car loꝛiginall eſt que le defendant computet &c. & adonques le defendant enter in account deuant Auditoꝛs &c. deuaunt queux il plead al iſſue, que eſt troue per verdict ou in auter manner, que il eſt in arrerages dun certaine ſumme, & donques le pᵗ̃ p foꝛce del dit oꝛiginall bꝛiefe de accoũt, auera finall ou diffinitiue Judgement, Ideo conſideratum eſt, quòd prædict' W. recuperet verſ. præfat' M. tant come eſt troue in arreragijs, & damna occaſione interplacitationis &c. & ceo eſt le Judgment per que le defendant eſt charge oue laccount, que eſt leffect de ſon ſuite, et le auter agard neſt foꝛſque acceſſary a ceo, car per lagard quòd computet, nul ſumme eſt recouer, ne fait ceo aſcun fine del oꝛiginall, mes eſt ſolement vn meane a conducer au fine: mes le Judgement per que il recouer̃ non ſolement les arrerages del account, mes dammages auxy, come eſt auaunt dit, eſt le fine & determination del oꝛiginall. Et pur ceo le bꝛiefe de erroꝛ poet bien dire ad graue damnum de ceſty que fuit defendant in account, car per le Judgement il ad perde, mes per lagard nemy, et pur ceo le Judgement intend in l' bꝛiefe de erroꝛ eſt iudicium grauiter damnoſum al defendant.

Le 4. reaſon fuit, que le agard quòd computet neſt foꝛſq; come vn agard, come agard que aſſiſe ſerra pꝛiſe, agard in waſt, bꝛe denq̃rer del waſt, in treſpaſſe &c. bꝛiefe denquirer des dammages, in partitione facienda, agard quòd partitio fiat, in bꝛiefe de admeaſurement, agard quòd amenſuratio fiat, agard q̃ vn ſer̃ ouſte de aide, & autiels ſemblables, ceux ne ſont foꝛſq; agards del Court, & ſont foꝛſq; interlocutorie, & nemy deſinitiue, dont nul bꝛief derroꝛ giſt tanq; le darrein Judgemt done: Et oue ceo accoꝛd 7. Rich. 2. tit. Error, 68. per Belknap, Skipwith, & tout le Court, q̃ ſi home pꝛia in aide & ſoit ouſte per agarde, il nauera bꝛiefe de Erroꝛ de ceo agard, auant que le pꝛincipall plea ſoit determine. Vide 17. E. 3. 5. in darreine pꝛeſentment: Et à ſententia interlocutori non appellatur iure ciuili.

5. Tanque le darreine Judgment les parties ont tour per le rolle, quel pꝛoue que le plea remaine vndetermine. Et Hill. 39. Eliz. Rotulo 327. Anne Countelle de Wat̃ port bꝛiefe de partition vers Henry Seigniour Berkley, lou Judge-

Judgement fuit done ſur vn ſpeciall verdict, quòd partitio heret, & deuaunt le darreine Judgement, ceſt aſcauoir (apres partition fait) quòd partitio firma & ſtabilis imperpetuũ teneatur, le Seignior Berkley port briefe de Error, & fuit reſolue que Error ne giſt tanq; le principall Judgement done que determine l'plea: Come in briefe de Dower, quant Judgemẽt eſt done q̃l recouera ſon dower, la le originall eſt determine, et le viẽ ferẽ executẽ del 3. part p metes & bounds, q̃l pces ne beſoigne dẽe retourne.

Et pur direct authoritie in le point in terminis terminantibus, in 21. Ed. 3. fol. 9. Thorp. vient al barre & dit, comment A port briefe de account vers B. que fuit dagard daccounter, & capias ad computand' iſſuiſt vers luy, et oze le dit B. ad port briefe de Error a diſturber laccount, et pria que le record ne ſoit pas maunde tanque il auer account: Stouſe, nient pluis ſerra, car le plea neſt pas finie tanque il ad account, et ea de cauſa le Court luy graunt que le record ne ſerra pas maunde: Et 21. E. 3. titulo Account Statham, vide 16. Ed. 4. 2. & 3.

Et eſt tenus in 1. H. 7. 2. b. in ceux parols, Sicome le defendant eſt adiudge daccounter, & ſoient al iſſue deuaunt Auditors, & lenqueſt eſt priſt de paſſer, & le plaintife fiſt default, ore ſerra le plaintife nonſuit & ne ſerra receiue apres. Et ſi le pl' ſoit preſent & ne voet ſuer pluis auaunt il ſerra barre in le principall action, car eux dionte que coment que le partie ſoit aiudge daccoũter vncore laction neſt clerement determine tanque laccount ſoit determine, car laccount depend ſur loriginal, & tout neſt forſque vn, & iſſint le nonſuite ou diſcontinuance ore ſur le proces ſur laccount eſt diſcontinuance de tout laction: Et nient ſemble al auters actions ou le pl' ad vn foits Iudgment de recouer, ore laction eſt clerement determine a touts intents, & quand il ſua *Scire facias* dauer execution, il poet ẽe nonſuit in cco, mes ceo ne face rien al original Iudgement.

Et vncore ſur conſideration de ceux et touts les auters liures, bien poet ẽe q̃ a diuers intents et purpoſes (come in les dits liures appiert) le dit agard quòd computet eſt vn Judgement, mes nemy tiel Judgement (pur les cauſes et reaſons auantdits) q̃ eſt entend deins les parols del briefe de Error ſi iudicium inde redditum ſit: & p̃ les pluis part chef-cũ pticuler caſe q̃ ad ẽe rule in les dits liures poit bñ eſtoier ſur ſeuerall & pticular reaſon.

Saches

Sachés Lectuer, que ou eſt dit in ceſt caſe que briefe de Errour ne giſt dun agard tanque le principall Judgement ſoit done, & ou eſt dit auxy, que nul briefe de erroꝛ giſt tanqꝫ lentire matter in loꝛiginall ſoit determine, ambideux ceux tales ſont regularement voyer, mes vncoꝛe cheſcun de eux ad exceptions: car quant al primer, in Trin. 18. Hen. 7. in banke le Roy Rot. 3. le caſe fuit, que vn Eaton fuit endite del moꝛt de John M. deuant Juſtices de Peace in le Countie de Lincolne, ſur que Cap. fuit agard, & ſur ceo Exigent fuit agard, puis quel Eaton moꝛuſt deuant aſcun attaindre, ſur quel agard del exigent ſes adminiſtratoꝛs poꝛt Briefe de Erroꝛ, et adiudge que le briefe derroꝛ giſt bien, et le reaſon de ceo fuit pur ceo q̄ per le agard del exigent ſes biēs & Chateux fuer̄ foꝛfeit, & de tiels agards q̄ux tendont ad tale graue damnum del partie brief derroꝛ giſt, coment que le principal iudgement ne vnques fuit done, & in ceſt caſe exceptio probat regulam; & ſic de ſimilibus. Quant al 2. vous trouers in 36. H. 6. titulo Fieri fac' 3. eſt tenus, que in det vers diuers per ſeuerall Præcipe ſi la ſoit erroꝛ in Judgement vers lun il auera briefe de erroꝛ, car in ceux oꝛiginalls in queux ſont ſeuerall Counts, & erroꝛ eſt vers lun, il auera briefe de erroꝛ, et le recoꝛd de ſon Count et le pleaū &c. ſerē ſeuer del oꝛiginall et remoue in banke le Roy, et vncoꝛe le oꝛiginall demurre icy (cibien pur ceo q̄ le court del common banke eſt in poſſeſſion de ceo, come pur ceo que autrement le Common Banke ne poet proceder a determiner le reſidue ſauns le oꝛiginall: et en tiel caſe, come a moy ſemble, ſi erroꝛ ſoit in loꝛiginall ſur Certiorari le chiefe Juſtice certifier̄ foꝛſqꝫ de tenoꝛ de ēt) mes ou loꝛiginall eſt vn & vn Count, il ne poet auer br̄e de Erroꝛ tanqꝫ tout ſoit determine, car le recoꝛd ne poit ēe in banke le Roy & auxi icy.

Auxi eſt dēe obſerue, que in le principal caſe de 36. Hen. 6. vbi ſupra, q̄ briefe dentre ſur diſſeiſi fuit poꝛt ō r̄e, & de rent, quaunt al terre ils fuer̄ al iſſue, et troue pur le dōant, et le rent penō vncoꝛe in plea, per que del terre il nauera Judgement &c. et *Priſot* la dit, poꝛtes a nous vn ſpeciall Briefe derroꝛ ſi vous voilles, & no⁹ voilomus aduiſer (quant nous veiomus le briefe) ſil ſerra allowe ou nemy: et in meſme le caſe loppinion del Court fuit, que la party in le principall caſe nauera Judgement de les coſtages de ſon ſuit, tanqꝫ le

oꝛiginal

oꝛiginall (i. tout le matt̃ in loꝛiginall) ſoit determine, car il ne poit ſcauer q̃uꝫ damages il aũa deuant q̃ le ſuite ſoit determine. Vide Dier 12. Eliz. 291. b. Vide 36. H. 6. 13.

¶ Quant al 2. point fuit vnement reſolue, que le recoꝛd neſt pas remoue, per ceo que tanꝫ tiel Judgement done come eſt intend in le bꝛiefe, le Chiefe Juſtice del Common Banke nad Authoꝛitie a maunder ceo, car les parols ſont ſi iudicium inde redditum ſit, tunc recordum & proceſſum &c. mittatis &c. & pur ceo le recoꝛd remaine vncoꝛe in le Commõ Banke, ſur q̃ ils poient pꝛoceder nient obſtant le rolle ſoit marke Mittitur &c.

Mich.

Mich. 12. Iacobi Regis.

Richard Godfreys caſe.

RObert Bullen pl̃ in Repl̃ vs Rich. Godfrey Ar̃, Owen Godfrey, & Jo. Haynes, q̃ commence Mich. 11. Iacobi Regis Rot. et Count que ils pr̃ſteront, ſes auers, s̃, 2. vaches &c. al Bathele in vn lieu appel le Cõmon &c. le dit Rich. bien auow, & le dit Owen & John come bailies al Rich. font conuſaunce del pr̃ſel des dits auers, pur ceo que le dit Rich. Godfrey fuit & vncore eſt ſeiſie del Manor̃ d Bathele in le County de Nor̃ff. (dont le lieu ou fuit pcel) &c. in fee, et q̃ le dit Rich. & toutz ceux queux eſtate il ad in le dit Manor̃ temps dont &c. ont ewe vn Leet vn foits per annum, s. deins mois apr̃s Mich. deuant ſon Steward dẽe ten̄, come al dit manor̃ appteinant, & q̃ tiel Steward p̃ le temps eſteãt, temps dont &c. ad vſe a iurer xii. ou pluſors des inhabitãts et reſiants deins le Leet auauntdit dẽe chiefe pledges del Leet, a inquirer de touts les articles concernant le Leet, & a pr̃ſenter eux, & que deins le dit Manor̃ de temps dont ad ẽe tiel Cuſtome, q̃ les dits Chiefe pledges del dit Leete p̃ le temps eſteant iſſint iure, ount vſe d temps dont &c. a eſcẽ Leet a pl̃ent (inter alia) q̃ ils m̃ les dits Chiefe pledges paier̃ al S̃r del Manor̃ p̃ l' temps eſteant pro capital' argent' ſiue pro certo Letæ x.s. et ceo ount pay a m̃ le Leet, et que al Leet tenus al dit manor̃ deins vn mois apr̃s le feaſt de Saint Mich. An. 10. Iac. Reg. deuãt Tho. King adõq̃s ſteward del dit

dit Richard Godfrey del dit Leet, & dit Steward iure le dit Robert Bullen, John Shaxton, Robert Daniell, & auters al number xij. chiefe Pledges de Leet, & de inquirer dez Articles del Leet: & ils eſteant iſſint iure, al dit Leet contemptuosé recuſauerũt præſentare quòd ipſi ijdem capitales plegij ſoluerent præfato Ricardo Godfrey, tunc domino manerij prædicti, ad illam eandem Letam pro capitali argento ſiue certo Letæ 10.s. necnon adtunc & ibidem contemptuoſe recuſauerunt ſoluere Ricardo ad eandẽ letam le dit chiefe ſiluer ou certeintie de Leet, ob quòd prædict. Thomas King Seneſchallus &c. ad illam eandem Letam finem ſex librarũ ſuper eoſdem capitales plegios adtunc & ibidem impoſuit, Et pur ceo que les dits 10. s. pur chiefe ſiluer ou certeintie del Leete, & le dit fine de vj. li. al dit Richard Godfrey fuer̃ arere et nient pay, le dit Richard Godfrey bien auowa, et les dits Owen et John come baillies del dit Richard conuſont le priſell des auers in le lieu ou &c. pro prædict. de paralibus ſummis decem ſolidorũ & ſex librarum &c. Sur quel auowry le plaintife demurre in ley. Et in ceſt caſe 4. points fuer̃ moue & argue al barre. 1. Si le dit fine eſteant ioyntment impoſe fuit loyall. 2. Si ne fuit duement impoſe, ſi ceo fuit voyde ou voydable. 3. Si lauowant poit diſtrener pur le dit chiefe ſiluer ou certeintie del Leet. 4. Quant le defendant auowa le priſel pur deux diſtinct cauſes, & appeirt de ſon mẽnance demeſne que lun de eux neſt alcun cauſe in ley, & q̃ pur lauter il ad iuſt cauſe, ſil auera returne.

Et ceſt caſe fuit in diuers Termes argue al barre, et in meſme ceſt Terme fuit argue al Bench. ¶ Et quaunt al prim̃ queſtion fuit vnement reſolue que le fine impoſe ſur les Jurors iointment ne fuit loialment impoſe, mez duiſſoit auer ẽe aſſeſſe ſur eux ſeueralment, et principalment in ceſt caſe, pur ceo que le cauſe que produce le fine fuit ſeuerall, car le refuſell de cheſcun de eux fuit ſeuerall & perſonell, & le refuſell del vn neſt le refuſell del auter, & pur ceo fuit reſolue que ſi alcuns refuſont & lez auters ſont priſt a preſenter &c. ceux q̃ux refuſont ſolement ſerr̃ fine: Et pur ceo le caſe que Priſot̃ mit in 35. Hen. 6. tit. Examination 17. que ſi vn denqueſt eſchape apres q̃ ils fuer̃ iure iſſint que ils ne poyent doner lour verdit, coment que les auters ne fuer̃ aſſent̃ a ceo, vncore touts ſerr̃ fine, fuit ouſterment denie dẽe ley, car nemo debet puniri pro alieni delicto a que il neſt partie, priuie, conſentant, ne aſſentant, car donq̃s poet eſtre dit, Rutillius fecit,

Æmilius

Æmilius plectitur; et fuit dit, que le dit case ou fuit maleñt repoꝛt, ou malement impꝛimee. Vide Pl.Com. Welkdons case fol. 519. Un Juroꝛ que misdemeane luy meſme fuit ſolemẽt impꝛiſon & fine. Vide 36.H.6.28. Et oue ceſt reſolutiõ accoꝛd 10.E.3.fol.9.& 10. ou Willã Freeman poꝛt Repl vers Labbot de Ramſey & auteꝛz de ſez auers a toꝛt pꝛiſe; Labbot auowa la pꝛiſel per le reaſon q̃ il eſt ſeignioꝛ del Hundꝛed de F. deins quel Hundꝛed il ad pluſoꝛs Leets a tener vn foits per an in la ville de M. deins ſñ le Hundꝛed &c. et que le dit William Freeman eſt reſiant &c. etq̃ a tiel Leet tenus deinz le Hundꝛed 12. fuer̃ iure a pꝛeſenter choſes pꝛeſentable que appent a la iournee, et ceſty William fuit vn de eux, et apꝛez ceo q̃ ils ont receiue les articles, ils fuer̃ commaund a rñder a les articles et a pꝛeſenter &c. et ils refuſont, q̃ ceſty Williã et les auters fuer̃ amercies, & lamerciaiñt ceſty Williã fuit affere a di. marke, & pur le di. marke il auowa: A q̃l Aſhton accouncell oue le plaintife pꝛiſt exceptiõ encont lauowꝛy, pur ceo q̃ lauowant ſuppoſe q̃ ilz fueront amercie in cõmon, et puis il dit q̃ lamerciament de William fuit affere, & iſſint fuit laſſerance ſeuerall, & lamerciaiñt in commõ, Judgeñt del auowꝛy? A q̃ fuit rñde & reſolue, q̃ iſſint ſerr̃ le ley, car pur ẽ q̃ touts refuſe touts ſerr̃ amercie, meſ q̃ñt le ſumme ſerr̃ impoſe ou affere ceo ſerr̃ cheſcun ſeueralment ſecundum quantitatem delicti ſaluo contenemento ſuo: & apꝛes le plaintf fuit commaund a dire ouſter. Et in 4. Reginæ Eliz. Dyer 211. les Juroꝛs del Leet refuſont a pl̃enter les articles del Leet accoꝛdant a lour fereñt, le ſteward aſſeſſera fine ſur cheſcũ de eux.

¶ Fuit ouſter reſolue, q̃ in pluis foꝛt caſe que in le caſe al barre, ou le foundation eſt ioint, vncoꝛe le fine ꝓ̃ ſeñall; come in aſſiſe vers 2. le diſſeiſin eſt troue oue foꝛce, coñt que le diſſeiſin ſoit ioint vncoꝛe le fine ſerr̃ ſeuerall, & oue ceo accoꝛd 10.Ed.3.10.a. Iſſit in 30.Ed.3.1.& 2. & 30.Aſſ.p.49. Deux fueront iointiñt conuict in Banke le Roy in Bill de Trñs de Reſcous fait in Midd̃ aux damages de xl.l. q̃ux ioindr̃ in Attaint, et la eſt ten⁹ q̃ coñt q̃ le fine et lemꝓiſonñt ſoit ſeueral, vncoꝛe intant q̃ le plaintif ad ioine eux in vn actiõ ils ioindꝛa bien in attaint ẽs luy. Et iſſint Fitz.Na.Br.75.G in Court baron ſi 2. ſõt añcies ꝑ vn trñs outragiouſiñt, il ne ioindꝛa in bꝛ̃ de Moderata miſericordia, car ilz ꝓ̃ ſeñalent añcie coñt q̃ le trñs ſoit fait iointiñt. Iſſit in vn pleint ſue ꝑ 2. ils ſõt nõſue lauñciaiñt ꝓ̃ ſeñal. Et eſt aſcauoire, q̃ q̃ñt

iudgement est done in le Banke le Roy ou in le Common Banke &c. vers 2. & ideo in misericordia, uncore quant ceo est affere per les Coroners in pays, lamerciament ſ̄ mise sur eux seueralment. Vide 1. H. 7. b. & Gresleys case in le 8. part de mes Reports, 39. Mes si un Jurie appere al barre, & le plaintife soit nonsue, les Judges poent amercie le plaintife, & le Jurie que sont de mesm le pays poent ceo affere, come est tenus in 18. E. 3. fol. 13. Et la est diuersity quant a cest purpose inſ̄ fine & amercement: car le fine est assesse per le Court, et pur ceo ne besoigne dēe affere, mes amerciament doit ē affere p̄ pays, et oue ceo accord 7. H. 6. 12. 10. H. 6. 7. Vide Gresleys case. Vide Pl. Com. Weldons case 519. Et quaunt diuers defendants sont, & ils sont per la ley a faire fine, donques le Judgement est, ideo capiantur, et ceo est pur le fine, car emprisonment nest forsq̄ tanq̄ le fine soit pay; et oue ceo accord 17. Edw. 3. 73. a. 9. Ed. 3. 6. Vide 34. H. 6. 24. et ceo est le cause, que quant lentre est ideo capiantur que il ne serr̄ amercy, pur ceo que il est a faire fine. Et coment que lentre soit ideo capiantur, uncore ceo serr̄ p̄rise reddendo singula singulis, car pur les damages del party ils serr̄ p̄rise per un ioint Cap. ad satisfac', mes p̄ le fine due al Roy ils serr̄ p̄rise seueralm̄t per Cap. pro fine, come appiert deuant q̄ ils serr̄ seueralmēt imprison & seueralment fine, car nest reason q̄ lun serr̄ imprison tanq̄ lauter ad pay son fine. Et in touts cases quant le meane dattainer al fine est seueral, le fine m̄ doit ē seuerall: Et uncore in aſcun cases le fine ou amerciament serr̄ impose sur diuers iointment, aſcun foits sur un County, aſcun foits sur un Hundred, et auxy sur un ville &c. come pur eschape dun murder &c. Vide 22. Ed. 3. Corone 238. 2. Ed. 3. ibidem 147. 3. Ed. 3. ibidem 302. 316. &c. & 10. Ed. 3. 10. a. et ē est pur le incertaintie des persons, et pur infiniteneſſe del number.

¶ Et fuit obserue, que des Courts, aſcums poient finer & nemy imprisoner, come le Court del Leet, aſcums ne poīt finer ne imprisō mes amercier, come le Court de Countie, Hundred, Court Baron &c. car nul Court poet finer ou imprisoner que nest Court de Record, come Fitz. Nat. Bre. 73. b. si home soit conuict deuant le Uic̄ in briefe de Recaption, le defendant serr̄ forsq̄ amercie, mes sil soit conuict in briefe de Recaption deuant les Justices, s. in Court de Record, le defendant serr̄ fine & imprison, mes donc̄s il ne serr̄ amercie, & oue ceo accord 9. H. 5. 1. b. Aſcunz poīt imprison & nēy fine,

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come les Constables al petit Sessions pur ascũ affray fait in disturbance del Court poent imprisõn mes nemy finer ascun Courts ne poent imprisoner, finer, ne amercier, come Ecclesiasticall Courts tenus deuant le Ordinarie, Archdeacon, &c. ou lour Commissaries, et autiels queux procedont solonq; le Cannon ou Ciuill Ley, Vide Brooke tit' Err' 177. Et ascun Courts poent finer, imprisoner, & amercier, come le case requir̃, come les Courts de Record al Westm et aylours.

¶ Fuit auxy resolue, que le reasonablenesse del fine serr̃ adiudge per les Justices, et si ceo appiert a eux dẽr excessiue ceo est inconter ley ne liera, car excessus in re qualibet iure reprobatur communi, come excessiue distresse est prohibit per le common ley. 11.E.3.fol.26. (car lact de Articul' super Chartas, cap.12.non capietur grauis districtio extend al Roy solement) Vide 27.Ass.51. 28.Ass.50. 11.H.4.2. 8.H.4.16. Et appiert per lestatute de W.1.cap.35. que excessiue ou outragio⁹ aide est inconter ley: et oue ceo accord Glanuil,lib.9.fol.70.& Fitz. Nat.Br.82.Fitz.Na.Br.75. & Magna Charta, cap.14. excessiue amerciament est inconter ley. Nullus liber homo amercietur &c.nisi secundũ quantitatem delicti,10.Ed.4.10.a.acc'. Mesme la ley de excessiue distresses, in respect de multiplicitie est inconter ley,27.Ass.50.51. Fitz.Nat.Br.178.b.9.H.7.3.assise gist de souent distres: 14.H.4.9.excessiue fine al volunt del seignior serr̃ dit oppression del people. Et si ten̄ in Dower ad villeins ou ten̄ a volunt q̃x fuerunt diuites, & il p excessiue tallages & fines fait eux poures et mendicants, ceo est adiudge per ley destre enconter ley et dessr̃ wast, come appiert in 16.H.3.tit.Wast.135. 16.H.7. & Fitzh.Nat.Br.60. b. & Registr' iudic' 25. Wast gist in exulando Henricum & Hermanum &c.natiuos,quorum quilibet tenuit vnum mesuagiũ & vnam virgatã terræ in villa de T. per graues & intollerabiles districtiones: per que appiert, q̃ tiel intollerable oppression des poures villeins et ten̄ a volunt est ad exhæredationem de cesty in reuersion, et inconter le common ley del terre. Et in le 4.part de mes Reports,fol.27.b. si fines des Copyholders dun manor sont incertaine, le seignior ne poet demand ou exact excessiue et vnreasonable fines, et le Copyholder poet ceo denier a payer, et le reasonablenes del fine serr̃ determine per les Justices &c. Quam rationabilis debet esse finis non definitur, sed omnibus circumstantijs inspectis pendet ex Iusticiariorum discretione: Et illint fuit adiudge in Communi Banco, inter

Stallon pl' & Brady seruient de Thom̃ Willowes Sñr del manor de Fenditton in le county de Cambridge, Pasch. 9 Iac. Rot. 1845.

¶ Quant al 2. point fuit resolue, q̃ quant fine est impose enconk ley cõe joint ou terra seuerali, come in le cas al barr̃, ou il soit vnreasonable, ceo poit ẽe auoid per plea, & iudgemt del Court in q̃ le suit depend, car aut̃ remedy nest pas done a luy.

¶ Quant al 3. fuit resolue, q̃ lauowant ne poet distrain̄ pur cest certainty del Leet, pur c̃ que ceo fuit inconk cõmon droit, et pur le private del Seignior del Leet, le quel le Seignior ne poet auer sans prescription, & pur ceo sicome il doit prescribe in le principall, issint il doit prescriber in le distresse. In 6. Ed. 3. 10. le case fuit, q̃ William port Repl' vers John de Ses auers a tort prise, le defendant auowa que mesme cesty John fuit chiefe dezine del hundred (que est intend del Leet) de F. & dit que le Seignior del hundred aueroit chescun an 2. marks, a receiuer le moity al hundred tenus prochein apres le Feast de Pasch. & lauter moity al hundred tenus prochein apres le feast de S. Mich. & conk les Seigniors de touts temps auoient ẽe seisie de cel prestation a receiuer per my les maines des chiefe dezineres, et dit outer que ils leuerent les dit 2. marks de touts les resiants deins le precinct del hundred solonq̃ ceo que ils auoient terres et chateux, et luy et touts les chiefe dezineres issint auoyent leuie tout temps, et a vn marke, que le plaintife &c. fuit assis solonq̃ ses tenements & les chateux q̃x il auoit, in 8. ñ. et pur le 8. ñ. arere il auowe: in que fuit obserue que le dit 2. marks, esteant enconk common droit, il prescribe a leuier ceo, et la Sir William Herle dit, que in pluiors lieus Dengliterre ceux que sont in dezine ferrõt cẽ prestation et les franktenemẽts nemy. In 11. H. 4. fol. 89. & resid' 13. H. 4. 9. in Repl' le defendant come baille del Abbot de Cerue, pur ceo q̃ l'Abbot est seisie del hundred de Totecombe in le countie de Dorß, et ad illonq̃s hundred de 3. semaignes in 3. semaignes, et ad 3. Leets chescun an, lun dẽe ten⁹ 15. Mich. le 2. lendemaine de Hillary, et le 3. al Hokday, a queux Leets vient 3. dezineres oue lour decenne et presentera choses presentable, dont lun est appel le prim̃ dezine, le 2. le 2. dezine, et le 3. le 3. dezine, les queux oue lour dezineres tendont de certo Letæ vn certaine rent aux iours dez Leets, et pur ceo que le dezine ne vient pas lendemaine apres Hil-

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lary anno 10. Regis nunc meſme le dezine fuit amercie a vj. ō. et auxy que le rent de certo Letæ ne fuit pay al Leet tenus a-pres Paſch. le dezier fuit amercie oue tout l' dezine, ꝛ iſſint pur les 2. cauſes il auowe: la Terwitt prist exception al a-nowry que le Seignior ne amercer̄ le dezine p̄ mon paunt de rent: A que Sir William Thirninge chief Juſtice, q̄ done le rule, reſponde, que il ſerra amercie in ceſt caſe ou le ſumme eſt payable al iour de Leete: 2. le Court la tient clerement que lou home dun dezine eſt amercie in la Hundred ou le Leet, que ſes beaſts ſerr̄ prise, 1. diſtrain aſſets bien, in quel lieu que ils ſont troues deins le Hundred, tout ſoit ceo in auter dezine, Vide 15. Elizab. Dyer 322. pur amerciament in Court Baron le Seignior ne diſtrainera ſans preſcrip-tion, Vide 44. Ed. 3. 13. Mes pur fine et touts amerciaments in Leet, diſtreſſe eſt incident de common droit. Vide Greſleys caſe auantdit.

¶ Quant al 4. point, admittant q̄ il puit diſtraine pur le certaintie del Leet, ꝛ que le impoſition del fine, eſt voide, ꝛ il ad auowe le prisell de meſme les beaſts pur ambideux cau-ſes, et appiert de ſon monſtrans demeſne que il nad cauſe pur lun, ſil auera retorne ou nemy fuit le queſtion. Et fuit obiect, que in tiel caſe il nauera, pur ceo que lauowant eſt vn actor, ꝛ lauowrie eſt in lieu de action: ꝛ ſi briefe ſoit port pur 2. choſes ꝛ appiert del monſtrans del plaintife que il nad cauſe pur lun, tout le briefe abatera, car ſils diſoyent q̄ le briefe que eſt le foundation del action couient compreh̄d veritie, ꝛ ſi ſoit apparant q̄ verity fault in le briefe, le briefe abatera: et pur ceo aſcuns preignont diuerſitie quaunt vn port action pur 2. choſes ꝛ appiert in le briefe que il miſ-priſt le veritie del matter del vn de eux, la tout le briefe a-batera; come ſi home port briefe pur Det, ou fait auowrie pur rent a 2. iours ꝛ lun iour neſt pas venue, fuit dit que tout le briefe, ou lauowrie abatera: Mes quant le deman-dant miſpriſt le ley pur vn ō eux come ſi waſt ſoit aſſigne in Keynes ꝛ Blackthorne, la eſt miſprision del ley. Auters preignont diuerſity inter generall briefes, come Dower, vnde nihil habet, Aſſiſe, Waſt, ꝛc. et pur ceo ſi le demaun-dant in Dower fait ſon demaund deſtre indowe de terre et de common ſans number, ou ſil port Aſſiſe del terre, et dun Annuitie, ou ſil aſſigne Waſt in Tymber, et Blackthorne, in tiels caſes intaunt que les briefes ſont

generall ceo eſtoyē per tant que poit ẽe maintaine per ley. car le bꝛief remain boyer, mes in tiel caſe le count, pleine, ou aſſignement abatera pur le reſt: mes auterment eſt quãt le bꝛe comprehend certaints, & appiert q̃ bꝛe ne giſt pur part, la tout le bꝛief abatera. Saches Lecteur, que l'ley ne garrant ceux diuerſities in tout, mes le common & boier erudition & diuerſity eſt, Lou home poꝛt action, ſoit l'bꝛief generall ou certain & particular, & il demaund 2. choſes et de ſon mꝛans demeſne appiert q̃ il ne poit auer action ou meliоꝛ bꝛ̃ pur vn de eux, la le bꝛe nabatera per tout, mes eſtoyera pur ceo que eſt bone: mes quant home poꝛt action pur 2 choſes & appiert que il ne poet auer ceſt bꝛief pur lun choſe mes poit auer auter in auter foꝛme, la l'bꝛief abatera in tout, & ne eſtoyē pur ceo que eſt bone. Et pur ceo ſi executoꝛs poꝛt ſpeciall bꝛief ſur leſtatut de 4. Ed. 3. cap. 7. de cloſe le teſtatoꝛ debꝛuſe, & de certaine ſumme dargent aſpoꝛtaꝭ in vita teſtatoris, & coment que ceo ſoit certain, & appiert de ſon mꝛans demeſne, vncoꝛe intant que pur le cloſe debꝛuſe il ne poit auer action, le defendant fuit rule a reſponder aux deniers in 11. H. 4. 3. 38 H. 8. 24. 25. In Detinue dun boy inſeale oue Charters & Miniments concernant lenheritance le plaintife, le plaintif count de 4. Charters deueign al maines del defendant per trouer, & intitle luy a 3. bien, & appiert per ſon count que le 4. concerne terre dont le plaintife et ſa feme fueront iointment ſeiſie come appiert per ſon mꝛans demeſne, mes pur ceo que ceo va al action quant al baron' (car il ſolement in tiel caſe ne poit auer auter action) a ceſt cauſe fuit adiudge que le bꝛiefe bien eſtoyē pur le remnant. 9. H. 6. 54. & 16. H. 7. 5. Si home poꝛt Foꝛmdon de terre & dun aduowſon, coment que le bꝛief ſoit certain, & appiert de ſon mꝛans demeſne que Foꝛmdon ne giſt pur laduowſon, vncoꝛe intant que ceo va al action del bꝛief, quant a ceo, le bꝛief eſtoiē bone pur la terre, 9. H. 7. 4. & 16. H. 7. 5. 37. Hen. 6. 25. b. Iſſint ſi home fait auowꝛy de le pꝛiſell del diſtreſſe pur diuers rents arere, & appiert de ſon mꝛans demeſne que parcell neſt vncoꝛe due, vncoꝛe le auowꝛie eſt bone pur le remnant & nabatera in tout. Vide 44. Ed. 3. 13. 48. Ed. 3. 4. & 5. 22. Elizab. Dyer 369. 370. Home poꝛt bꝛ̃ de electione cuſtodiæ terræ & hæredis, et les parties plead al iſſue, et fuit troue pur le plaintife, et le plaintife ad iudgement del terre tantum, car ne giſt de heire.

Vide

Vide 8.Ed.2. breue 847.41.Ed.3.breue.543.26.Ed.3.64.9.H.6. 19.46. 11.H.6.5. 22.H.6.14.26.H.6.tit' Attaint 4.6.Ed.4.7. 8. Ed. 4.3. 18.Ed.4.27. 21.Ed.4.24. Mes ſi home port briefe Dentry in natur daſſiſe de 2. acres, lou ſon meane demeſne pur lun acr il doit aũ bre Dentr in le per, ou in ſemblable caſes, la tout le bre abatera pur ceo que il poit aũ melior bre quant al vn acre, & ceo extend pas al action, mes al bre ſolement. 16.H.7.5.acc'. Vide 20.H.7.p.vltimo. Et iudgement fuit done pur le plaintif enconter lauowant.

Mich.

Mich. 12. Iacobi Regis.

Richard Lifords caſe.

EN Trñs p Thomas Stampe geñ pr enũs John Clinton def.q̃ cõmence Trin. 12. Iac. Reg. Rot. 343. & count (inter alia) De ſes cloſes appel Wittenhams in Pealmer in le County de Berk. le def. pleade, qd quidem Iohan. Liford defunct' pater Richardi Liford fuit ſeiſi dun capital meſuage appel Pealmere ferme & diũs terres & tenemẽts a ceo apperteiñ in Pealmere auantdit, dont lez dits cloſes appel Wittenhams fuer pcel &c. in s̃ demeſne come de fee, & vltim' Iulij anno 4. Reg. nunc p s̃ fait indent̃ demiſa al dit Thom Stampe & a vn Mary Parker les teñts auantditz in q̃ (excepto vno cotagio voc' le forge, ac oibus arboribus, quercubus, vlmis, & fraxinis adtũc creſcen', vltra creſcentiã 21. ann. (arborib9 decaſ. nõ exiſten' maeremiũ tantũmodo reſeruat' &c.) habend' & tenend' tenemẽta p̃d cum pertin' vnde &c. (except' præexcept) præf. Th. Stampe & Ma. Parker p & durant' vita naturali ipſi9 Tho. & Mar. & eorũ diutius viuent', virtute cui9 dimiſſ. idem Tho. & Maria poſtea, & ante præd' tẽpus quo &c. in ten'ta præd. cũ pertin' in quibus &c. intrauer' & fuer' & adhuc exiſtũt inde ſeĩti in dn'ico ſuo vt de libero ten'to p term' vitarũ ſuar'. Et le dit J. Liford, eſteant ſeiſie del reuerſiõ, 8. Ian. an. reg. nunc ſexto per ſon fait indẽt p̃ luy & ſes hẽs couenãt oue Jo. Winchecomb & Vinc Smith, cybñ in conſiderac dũ mariage dẽe ſolẽnize int' p̃d Rich. & hæt' appar' p̃d Ioh. Liford, & Johã Shepheue,

come

come in conſideration de paternal amour & affection al dit Richard & ſes auter fits, q̃ il et ſes heirs exunc in poſterum ſtarent & eſſent ſeiſiti de tenemẽtis prædict. cum pertin' ſuperius dimiſſis, al vſe del dit Rich. et les heirs males de ſon corps, et puis al oeps de Thom̃ ſon fits & a les heires males de ſ̃ corps, et due autiels reñ al Daniel et Nath. ſes fits, layſãt le reñion del fee ſimple in luy m̃, p force de q̃, & del Statute de vſez, le dit Rich. fuit ſeiſi del reñion dez tenem̃ts in tail, & le dit John Clynton p ſon commandem̃t enter in les dits cloſes appel Wittenhams, a mẽe a vn Henry Lawrence et Will Lawrence cert querus adonqs creſcen' in clauſ. prædictis, q̃x al temps del demiſe fuer ouſter lage de 21. ans, & quæ ad præd. Richard. Liford de iure pertinebant, & la adonqs venda al eux 6. querus &c. prout ei bene licuit, quæ eſt eadem fractio &c. et demãd iudgem̃t ſi action &c. Sur q̃l plea le pl̃ demurre in ley. Et ceſt caſe fuit deuide in 2. geñal queſtiõs: le 1. Quel choſe fuit except p le exceptiõ des arbres: 2. Quel choſe pas per le dit conueyance del reuerſion.

Et que lez arbres ne paſſer al Rich. Liford, 4. obiections fuer fait: 1. q̃ p le exception les arbres remain come chattelz in le leſſor: le 2. admittant q̃ p le exception lez arbres remain in luy come inheritance, donqs p le exceptiõ le ſoile m̃ eſt except al leſſor: le 3. q̃ franktenem̃t ou inheritance in poſſeſſiõ ne poet ẽe p les rules del ley parcel del reuer̃ exceptant ſur franktenem̃t: le 4. q̃ p le dit couenãt John Liford couenãt a eſtoier ſeiſie de tenementis pred. cum pertin' ſuperius dimiſſis, & pur ceo Rich. Liford ne puit auñ pluis q̃ fuer demiſe, & les arbres ne fuer demiſe. Quant al prim̃ ſemble a eux q̃ p le exceptiõ les arbres fuer chateux in le leſſor diuide in ley del frãktenem̃t & inheritance del tre, car q̃n hõe demiſe terres pur vie, le pperty des arbres eſt in le leſſee, & le leſſor nad forſq̃ poſſibility daũ eux arere, s. ſils remaine annexe a ſon inheritance q̃n le leſſee pur vie morust, et p ceo eſt reſolue p tout le Court in Labbot de Torres caſe in 21. H. 6. 46. q̃ ſi hõe fait leaſe pur vie de ſ̃ terre, il ne poet doñ les arbres al eſtrañ, p ceo q̃ il nauoit forſq̃ poſſibility, & p conſequence quant il except eux a luy m̃ ils remaine in luy come chateux: Et eſt tenus in 12. Ed. 4. 8. q̃ ſi home fait leaſe pur anz, & le leſſee ſuccide les arbres, le leſſor ne poet eux p̃nder, Vide 13. H. 7. 9. 12. Ed. 4. 52. et ſi le leſſor ſuccide lez arbres, le leſſee eux aña, c̃e eſt tenus in 44. Ed. 3. 44. q̃x liures & mults auers, puont q̃ le ppertie del arbre eſt in le leſſee pur ans, a fortiori in le leſſee

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pur vie, et pur ceo quant le leſſor except eux, il auera eux cõe chateux ſeuer̄ del tre: Et ils reliont mult ſi le liure in 2. Eliz. Dyer 184. in Daunſeys caſe, ou queſtiõ eſt fait, q̃n arbres ſõt except in caſe del leſſee p̃ ans, le q̃l ils ſer̄ chateux in le leſſor, de q̃l ils ne vnq̃s voillont auer fait doubt in cas del leas pur vie, car le ley fait grand diſtinctie inter exception in caſe del leaſe pur ans, & in caſe del leaſe p̃ vie, et pur ceo ſi home fait leaſe pur vie dun mannor, except vn acre, eſt acre, durant le leaſe, neſt pas ꝑcel del mannor: car in tiel caſe in reall action port del mannor forꝑꝛiſe doit eſtre fait, auſſint eſt in cas del leaſe pur ans. cõe appiert 38. H. 6. 38. a. Pl. Com. in Eulmerſtons caſe, fo. 103. Iſſint ſi le roy fait leaſe pur vie dun mannor, ſans ꝑler del aduowſon, laduowſon remain in le roy come in groſſe, qd omnes conceſſerunt, cõe appiert 38. H. 6. 34. b. Et la eſt adiudge, q̃ ꝑ grant del reuer̄, habendum le reũſion oue laduowſon, laduowſon ne paſſer̄ al patentee, car laduowſon in tiel caſe fuit ſeuer & deueigne in groſſe q̃n al fee, q̃l fuit dit ad grand affinity oue le caſe al barre. 2. Admittant q̃ les arbres ſont reſerue, cõe inheritãce in le leſſor, donq̃s le tre m̃, ſur q̃l larbres creſc̃, eſt ꝙ ceo except, cõe ẽ reſolue in Iues caſe in le 5. part de mes Reports, fo. 11. Vide 44. E. 3. 22. 46. E. 3. 22. 27. Aſſ. 49. 3. H. 6. 45. 16. E. 4. 2. 14. H. 8. 1. 33. H. 8. Br. tit. Reſeruation 79. 6. & 7. E. 6. Dyer 39. & donq̃s ẽne poet paſſer ꝑ le conueyance del reuerſion, car ẽ ne fuit aſcun part del demiſe, et pur ceo ſi home fait leaſe pur vie dun mannor, excepting vn acre, & puis grant le reũſion del mannor a vn auk̃ in fee, lacre in poſſeſſiõ ne paſſer̄, mes eſt ſeũ del manor a touts iours: come ſi A. ſoit diſſeiſie dun acre parcel de ſõ mannor, com̃t q̃ lacre in dñt eſt parcell del mannor, vncor ſi A infeoffe vn auk̃ de ſon manor, le droit de ceſt acre ne paſſera, mes eſt ſeuer̄ del mannor a touts iours, cõe eſt tenus in 38. H. 6. 38. a. Iſſint ſi home ſoit diſſeiſi dun common appẽd, nient obſtant le diſſeiſin, ẽ in droit eſt append̄ al mannor, et vncore ſi durant le tẽps del diſſeiſin feoffem̃t in fee ſoit fait del manor, le cõmõ eſt ſeũ & extinct a touts iours, cõe eſt tenus in 4. E. 3. 46. & Fitz. Na. Br. 180. F. Iſſint in le caſe al bark ꝑ lexception des arbres le ſoile m̃ eſt except, pur q̃ ẽ ne poet paſſer ꝑ le grant del reuerſiõ. 3. Fuit obiect, q̃ vn reũſiõ expectant ſur franktenem̃t poet ẽe parcel ou append̄ al frãktenem̃t & inheritance in poſſeſſion, mes franktenem̃t ou inheritãce in poſſeſſion ne poet ẽe ꝑcel ou append̄ al reũſiõ expectant ſur vn franktenem̃t, cõe eſt tenus in 38. H. 6. fol. 38.

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4. Le conueyance del reuerſion ne touch les arbres & l'ſoile deſouth eux, car le dit conueiance recite le dit demiſe del terr̃ oue leexception des arbres, & cõuey tenem̃ta præd. cum pertin' ſuperius dimiſſa, et leexception neſt pas alcun pcel del demiſe, come eſt argue in 3. H. 6. fol. 45. et pur ceo le dit conueyance neptend my aux arbres except, et per conſequence eux ne poyent paſſer oue le reuerſion, et a ceux cauſes le plaintife recouera.

Et del auter part fuit argue per le Counceil del defendãt, & bnement agree per tout le court, q̃ le plaint̃ ſerr̃ barre: ¶ Et q̃ſt al pr̃iñ fuit r̃ide et reſolue, q̃ les arbres nõt obl̃ãt lexceptiõ remaine parcel & excreſceant hors del inheritance õl terre, & ne ſont chateux ne aler̃ a ſes executors, mes diſcend̃ a ſon hr̃e, ſi nul conueyance vſt r̃e fait del reũſion; et ceo pur diuers cauſes: 1. Le ley ne fauor fractions & ſeuerãces des arbres del franktenẽt & inheritance del r̃e, pur ceo que p eux pluis toſt les arbres ſerr̃ waſt & deſtroy: & p̃ ceo ſi home p fait indent bargaine & vend done & grant ſon manor de D. & touts ſes arbres creſceants ſur ceo a vn auter, & le fait nõ pas inrolle ſolonq; leſtatute, intant que le manor ne paſſer̃, les arbres ne paſſer̃ al bargain, & iſſint ſeuer̃ õl manñ, coñt q̃ ils ſont grant p expres pols, et q̃ le grant de cheſcun ſerr̃ pr̃ile pluis fort vers luy m̃, coñe fuit reſolue in 9. El. Reginæ & iſſint fuit tenus in 15. El. in Andrewes caſe in commõ bãke, q̃ ieo m̃ oia. In 23. El. Dyer 374. home demiſeth, graunteth, and to ferme letteth a Ferme &c. together with all maner of Timber, Wood, vnderwood, & Hedge-rowes, therupon appertaining (except all great oakes growing in one certaine Cloſe about the Ferme-houſe) a auer & ten̄ le ferme pur terme de 21. ans rendont rent, & le doubt fuit, le q̃l le leſſee poit ſuccider & vender le Timber trees nient except, ſans eſteant impeach pur le waſt, & ſemble al ſeignior Dyer q̃ il poit p ceſt pol grant, et p lentendeñt del exception des groſſe Okes &c. Auxy le Habendum, q̃ conuey le limitation pur ans, ne fait mention de Timber &c. Mez Periam, Wyndam, & Meade done Judgeñt vers le defendant, que il ne poet ſuccider le Timber, car ils ne fueront ſeuer̃ del inheritance, ne paſſa per le graunt. Le 2. reaſon fuit, q̃ quant home demiſe ſon terre pur vie ou pur ans, le leſſee nad forſq; pticular intereſt in les arbres, mez l generall intereſt des arbres remain in le leſſor, car le leſſee ãa les maſt et fruits dez arbres, & ſhadow p̃ ſes auers &c. mes lenterreſt del corps des arbres r̃ in le leſſor, cõe pcell de

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ſon inheritãce, & ceo appiert in 29. H. 8. Dyer fol. 46. ou eſt ſe-
mus in expreſſe pols, q̃ ne poet ẽe dedit q̃ le ꝓpty des groſſe
arbres, s. le Timber, eſt reſerue p la ley a le leſſor, mes il ne
poet ceo grant ſans licence del termor, car le termor ad in-
tereſt in ceo, s. dauer le maſt et fruit ſur ceo creſceant, et les
ſhowds de eux pur fuel, mes le verie ꝓpertie del arbre ẽ in
le leſſor come annexe a ſon inheritãce, et tout ceo de mote in
mote appiert in le dit liure: Et in 1. Mar. Dyer fol. 90. eſt auſi
ten⁹, q̃ le leſſee aũa les fruits dez arbres & les branches pur
fuel & incloſure des fences: Et in 10. H. 7. f. 3. le leſſee nad in-
tereſt in les arbres forſq; pur eux lopper ou pur ſhadow de
ſes beaſts, iſſint q̃ la eſt dit, q̃ le leſſee ad intereſt in larbre, &
le leſſor auxy. Vide Herlakendens caſe, lib. 4. de mes Reports, f.
62. Et ſur conſideratiõ de ceux & mults auꝛs liures fuit re-
ſolue, que q̃ſt nul exception eſt in le leaſe des arbres, k̃ leſſee
ad tiel ꝓticular intereſt in larbre cõe eſt anant dit, et le inhe-
ritance del arbre eſt in le leſſor: et p ceſt diũſity touts noſtr̃
liures ſont biẽ reconcile: q̃l diũſity appiert auxy in les liũs
meſmes, car in waſt vs leſſee pur vie ou pur ans in caſe de
ſuccider des arbres, eſt dit in le bẽ dẽe ad exhæredationem le
leſſor, & le leſſor aps q̃ il ad fait leaſe pur vie poet grãter per
fait les arbres ou reaſonable eſtoũs hors de eux a vn auꝛ &
ſes hẽs, & ẽ ꝓdra effect aps le mort del leſſe, & tiel grant
p le leſſor eſt bone in reſpect del inheritãce q̃ il ad in tiel caſe
in les arbres; & le leſſor poet commander le leſſee p bouche a
ſuccider les arbres, come eſt tenus in 18. E. 3. 54. & 2. H. 7. 14.
Mes voyer eſt q̃ eſt dit in le dit liure de 21. H. 6. f. 46. b. q̃ tiel
done al eſtranger eſt void durant leſtate p vie, p le ꝓticuler
ꝓiudice q̃ poet accreſcer a luy q̃ ad leſtate pur vie: & in 50. E.
3. 10. in Frankleys caſe eſt dit, q̃ al commõ ley ne vnqs fuit
vieu q̃ aſcuns diſmes ſerr̃ paye dez groſſe arbres, pur ẽ q̃ ilz
ſont ꝑcel del inheritance, & ẽ eſt pue p leſtatut de 45. E. 3. c. 3.
q̃ in tiel caſe Prohibition giſt, come deuant ad ẽe vſe, q̃l pue
q̃ le commõ ley fuit iſſint deuant le feſans del ſtatute. Iſſint
fuit tenus, Paſchæ 42. Eli. Reginæ inter Sampſon & Worthing-
ton in Cõmuni Banco, q̃ ſi arbres de Timber auoyẽt ẽe vſu-
alm̃t toppe & loppe diſmes ne ſerr̃ paye pur eux, car ſicõe le
ley priuiledge le corps de arbre eſteant ꝑcell del inheritãce,
iſſint ceo priuiledge les branches auxy: Et oue ceo accord le
Doctor & Student 175. Iſſint ſi hõe ſuccide ſes arbres de me-
riſme, diſmes ne ſerr̃ pay pur les germynes q̃x ſont creſce-
ants ex radicibus ſeu ſtipitibus, in reſpect q̃ le root eſt ꝑcel del

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inheritance, come fuit temps Paſch. 29. Eliz. in ceſt Court. Iſſint ſi vn arbre de Timber deueign̄ arida, ſicca, & non portans folia nec fructus in ætate, nec exiſtens maeremium, et le owner ceo ſuccide, nul diſmes ſerr̄ pay de ceo pur lenheritance que fuit vn ſoits in luy, quel p̄uiledge extend a luy quant il deneigne dotard, come fuit adiudge in Communi banco, Hill. 2. Iac. Rot. 229. inter Brooke & Rogers. Iſſint pur le barke des queres de maeriſme nul diſmes ſerr̄ pay pur le cauſe auantdit: & oue ceo accord le Doctor & Student, fol. 175. Mes pur arbres diſmes ſerr̄ pay, p̄ ceo q̄ creſc̄ annuelm̄t, cõe appiert in le Regiſter fo. 49. Et home poit aũ inheritãce in fee ſimple in treſ cy longe come tiel arbre creſcera, 27. H. 8. fol. 29. p̄ ceo q̄ hõe poit aũ inheritãce in larbre m̄. Vide 46. E. 3. 1. b. in trn's, 32. H. 6. 2. 20. H. 6. 22. 5. H. 4. 2. Eſt puruieu p̄ leſtatute de W. 2. cap. 22. cum duo vel tres teneant boſcũ &c. q̄ ſi lun teñ in commõ in fee ſimple fait waſt in larbres, laut̄ actiõ d waſt, & le vẽ dirra ad exhæredationem, come in 29. E. 3. fol. 19. ſi lun copartener, deuant p̄tition, fait feoffem̄t al aut̄, & lun de eux fait waſt in les arbres, action d waſt giſt, & ceo fuit p̄uide p̄ le p̄ſeruation des arbres, & Fitz. Nat. Br. 49. ſi vn Parſon dũ Eſgliſe & vn A. ſont teñ in commõ dũ boys, & A. indeuor a faire waſt, le Parſon pur le p̄ſeruation des arbres de meriſme aſſa phibition vs luy q̄ il ne ferra waſt, & le reaſon de ceo, cõe le chiefe Iuſtice dit, fuit, q̄ ſi Parſon dun Eſgliſe voilt degaſt le inheritance d ſon Eſgliſe a ſon p̄iuate vſe in ſuccider des arbres le p̄ſon poit aũ phibitiõ vs luy, car l'Parſon eſt ſeiſie come in droit de ſon Eſgliſe, & ſon glebe eſt l'dower de ſon Eſgliſe, car de c̄ il fuit endow, & iſſint parle mults ancient records, & iſſint intant q̄ phibition giſt verz luy, reaſon voet q̄ il aſſa autiel remedy verz celly q̄ tient oue luy in common: et ſur ceo vn notable reſolution in Parliam̄t tenus al Carliſle in an. 35. E. 1. fuit cite a ceſt effect, car la ſur cõplaint fait (in ceux parolx) voilt noſtre Seignior le Roy entendre, q̄ Sir Anthony Cueſq̄ de Dureſme waſt & deſtruit tout le boys apperteinant a ſon Eſgliſe in Leueſq̄rie de Dureſme, p̄ done & vende & manuais gard & p̄ rearer dez forgez d ferr̄ & plombe & arbre carbons &c. dõt ſi nr̄e Sr̄ le Roy q̄ eſt anowee del Eſgliſe ny p̄ mit remedy, Leſgliſe auantdit ſerra diſherite & impouery, in p̄iudice de nr̄e Seignior l'Roy in ſa Corone & d Chapt̄ de Dureſme: Ita reſponſum eſt; Inhibeatur per breue de Cancellaria Epiſcopo & miniſtris ſuis ne faciant vaſtũ de contentis in petitione: p̄ q̄ appiert, q̄ le parliam̄t referre

luy al ordinary remedy del common ley p̄ tiel de Prohibitione in tiel caſe: Et Mich. 23. E. 1. inter adiudicata corã Rege, Hunt'. fol. 83. in Theſaur' Scaccar' ſic adiudicatur, qd' Eccleſia eſt infra ætatẽ & in cuſtodia domini Regis, qui tenetur iura & hæreditates eiuſdem manutenere & defendere: Et Rot' Patent' ann. 14. H. 3. M. 8. Archiepiſcopus Dublin fecit finẽ de 300. marcis pro deafforeſtatione foreſtæ Archiepiſcopatus ſui. Vide 2. H. 4. 3. b. ſi Eueſq; ou Archdeacõ abate & ſuccide tout le boys q̄ il ad, il ſerra depoſe come dilapidator de ſon meaſon, 29. E. 3. 16. act̃. Vide 27 Aſſ. pl. 10. 20. H. 6. 46. 10. E. 4. 19. Et le treatiſe intitle, Ne rectores proſternãt arbores in cœmiterio, q̄ neſt forſq; declaratiõ del common ley, in ceux parols, Prohibem' ne Eccleſiarũ rectores arbores in cœmiterio creſcent' preſumant proſternere indiſcretè, niſi cũ Cancellus Eccleſiæ neceſſariâ indiget refectione &c. Et eſt voier regularm̃t, Meliorem conditionem Eccleſiæ facere poteſt prælatus, deteriorem nequaquam.

¶ Quant al 2. obiection, diuerſity fuit p̄ciſe ink̃ vn bois, q̄ poet ẽe demaund in vn Præcipe p̄ le noſme de tants des acres de bois, & arbres creſceantz hors dalcũ bois, queux ne poient ẽe demand in vn Præcipe p̄ alc̃ noſme forſq; p̄ noſme de terr̃ ou paſture &c. ou ils creſcont: car ſi tiel bois, dont vn Præcipe giſt, ſoit parcel de mon manor de G. et ieo leſſa mon manor exceptant bois, p̄ c̃ le ſoile ñ eſt except, et in Præcipe port del manor vn forſp̄ile doit ẽe fait ô tants des acres ô bois: mes in tiel caſe, ſi ieo except touts mes arbres q̄ creſcont hors dalcun bois mes ſur tre ou paſture, la p̄ lexceptiõ des arbres l' ſoile ñ neſt except, mes ſufficiẽt nutrim̃t hors del tre eſt reſerue a ſuſteiner l' vie vegetatiue des arbres, car ſans ceo les arbres que ſont except ne poient conſiſter, mes ſi le leſſor eux ſuccide & p̄ le licence le leſſee eux eradicate, in tiel caſe le leſſee auera le ſoile, car ceſſante cauſa ceſſat effectus. Et ceſt diuerſity poit eſtr̃ collect hors de Iues caſe, li. 5. de mes Reports, fol. 11. Vide 14. H. 8. 1. Et ſi ieo per fait graunt touts mes arbres deins mon manner de G. a vn et ſes heires, le grauntee auera inheritance in eux ſans alcun liuery et ſeiſin. Vide Sir Frãcis Barringtons caſe in le 8. part de mes Repors, fol. 137. Et in Præcipe port vers leſſee pur vie, ou les arbres ſont except, ne beloigñ a faitr̃ forſp̄ile in tiel caſe des arbres pur ceo q̄ nul Præcipe giſt de eux, mes ilz ſerr̃ recouer̃ p̄ ceſty q̄ droit ad p̄amont p̄ le recoũy del tre: Vide pur le dit rule de forſp̄ile 4. E. 3. 48. 17. E. 3. 62. 10. H. 7. 17. Fitz. Nat. Br. 201. &c. et p̄ cẽ diñſity apparãt in nr̃ liurer, toutz eux ſõt bñ accord.

Et

Et in le dit exceptiõ 5. choſes fuer̃ obſerue: 1. q̃ nient obſtãt lexception ils remainont come pcell del inheritance: 2. q̃ le ſoile m̃ nest except mes ſufficient nutriment p̃ le vegitation del arbre: 3. q̃ le leſſee aũa le paſture deſouth larbre, cõe in 4.E.6.tit.Waſt,Br.136. rien ſer̃ retenuer in waſt mes le circuit del root ꝛ nemy le latitude des branches: 4. que le leſſor aũa toutz lez benefitz des arbres: et 5. les aeries de touts volatiles q̃ux aery in lez arbrez, ꝛ les fruits. ¶ Et fuit reſolue, q̃ coñt fictione Iuris quoad le leſſee l'arbre ẽ diuide del franktenemẽt, vn̄ in facto ꝛ verity, q̃ñ a touts auts, ceo eſt parcel del inheritance le leſſor: car fuit dit, q̃ arbres de meriſme ne poent ẽe ſuccide oue vn Gooſe-quil, come ſi teñ in taile vẽde lez arbrez a vn auter, ore ceo eſt vn chatel in le vendee, ꝛ ſes executors aũont eux, ꝛ in tiel caſe fictione Iuris ilz ſont ſeuer del tre, mes ſi teñ in taile morust deuant actuel ſeiſance q̃ñ al iſſue in taile ils ſont pcel de ſon inheritance, ꝛ aleront oue ceo, ꝛ le vendee ne poit eux prender, ꝛ vncore quoad le teñ in taile m̃ ils fuer̃ ſeiſ p̃ vn temps, 18.E.4.6. 11.H.4.32. Pl.Com 259.& 438. 27.H.8.fol.5.b. Iſſint in le caſe al barre, quoad le leſſor ꝛ touts auters ilz remainont parcel del inheritance. ¶ Fuit auxi reſolue, q̃ eſt diuerſity inter les caſes q̃ux ount ẽe miſe, et le caſe al barre: car voier eſt, ſi home fait leaſe pur vie dñi mannor a q̃ vn aduowſon eſt append̃ ꝛ except vn acre oue laduowſon, in tiel caſe ſil graunt ouſter le reuerſion le acre oue laduowſon ne paſſer̃ al grantee, mes ſont ſeiſ ꝛ diſunite del manor a touts iours, come vn brache où aut̃ member diuide del corps: mes lez arbrez, nient obſtant lexceptiõ ſont excreſceant hors del tre, ꝛ oũt lour nutriñt hors d̃ ceo, ꝛ ne ſont in rei veritate diuidẽ de ceo. Et pur ceo ſi home fait feoffement in fee dun manor, exceptant les arbres, ꝛ puis le feoffee achate les arbres, ilz ſont arere faits pcell del inheritance coñt q̃ ils fuer̃ abſoluteñt diuide pur vn temps, ꝛ ẽ appiert in Herlakẽdens caſe in le 4.part de mes Reports, fo.63.b Mes in m̃ l'caſe ſi vn acre du vn mele vſt ẽe except, ꝛ le feoffee apres purchaſe lacre ou le meſe, nul de eux ſer̃ pcel d̃ ceo arere: Et iſſint le diuerſitie appiert inter partem integralem, ſimilarem, & diſſimilarem, & inter partem diſſimilarẽ ſolo annexam ſiue adhærentem (come eſt dit in 9.Ed.3.2. Robert de Vanlores caſe) vt domus, & partem diſſimilarem excreſcentem, vt arbor.

¶ Quant al 3. abiection, voier eſt q̃ vn integral part ou

choſe append̄ in poſſ. ne poit ẽe parcel &c. dũ reũſion expectant ſur eſtate pur vie, cõe ad ẽe dit, mes les arbres (come ad eſtre ſouent foits dit) ſont excreſceant hors del inheritance & attendant ſur ceo, cõe p grant del reũſion les chẽes & euidences paſſer cõe choſes attendãt ſur le inheritance, & in verity ilz ſont lez ſuewes del inheritance. Iſſint ſi ieo ay mãor in q̃l eſt vn parke & ſilvpounds, & ieo demiſe le manor, excepte le game de Dere & lez piſſons, & puis ieo grant ouſter le reũſion, le graũtee aũa le Dere, & les piſſõs, cõe choſe attẽ ſur l' inheritance, iſſint non ſolemẽt ceux q̃ux ount vie vegetatiue, mes ceux auxi q̃ux ount vie ſenſitiue, aler̃ oue l' inheritance. Et ẽ reſolue in 14. H. 8. 25. in Wiſtowes caſe de Grayes Inne, q̃ ſi home ad molin a chiuaux, & Molin̄ priſt de miſtion hors de molyn al entẽt a picker ẽ a grinder l' melieur, coñt q̃ ẽ ſoit actuelm̃t ſeiſi del molyn, vncor ceo remaine pcell del molin, cõe ſi ẽ vſt ẽe tout tẽps giſant ſur laur ſtone, & p conſequence p le demiſe ou conueiance del molyn paſſer̃ oue ceo: Iſſint de dores, feneſtres, annule &c. m̃ la ley des keies coñt q̃ ils ſont diſtinct choſes, vncore ils paſſer̃ oue le meaſon: à fortiori in le caſe al barre, les arbres q̃ux ſont creſceant hors del inheritance paſſer̃ oue ẽ. Et in le caſe al barre ſer̃ graũd inconuenience ſi les arbres ne paſſer̃ oue le inheritãce, car in tout les leaſes p̃ vie ou ans fait p le Roy, ou del ẽre deins l' ſurvey del eſcheq̃r, ou del Duchy, lez arbres ſõt except, & ſilz ſer̃ repute cõe chateux, ou ſilz ne paſſer̃ oue l' reſiliõ cõe pcel del inheritãce, grand inc̃uenience inſuer̃ coñt q̃ les arbres ſont pticularm̃t grant. Vide Swaines caſe in the 8. part de mes Reports, fol. 63. quod nota bene.

¶ Quãt al 4. & darrein obiect̃ fuit reſolue, 1. q̃ ſi le reũſion ad ẽe conuey ouſter ou p noſme des teneñts ou de ſ reũſion geñalm̃t, ſans q̃ſliõ lez arbres paſſer̃, & coñt q̃ il coueñt a eſtoier ſeiſie de ten'tis præd' cũ pertin' ſuperiùs dimiſſis &c. vn̄ p ceo lenheritãce de tout le ẽre paſſer̃ oue ẽ, & les arbres ne paſſer̃ cõe choſe demiſe, mes cõe choſe annex al inheritance, niẽt obſtãt q̃ ilz ne fuer̃ demiſe. Et in le arguñt de cẽ point, ceux caſes fuer̃ cite, Paſch. 41. El. in ceſt court, int' Madame Ruſſel pl' & Gulwel def. in action de Det ſ obligatiõ, ou le caſe fuit, q̃ le pl' p fait indent̃ leſſa al def. vn ferm̃ appel D. except vn cloſe p noſme, & le leſſee p m̃ lendenture coueñt oue le leſſor a faire diuers choſes cõcernant le p̃miſſes, & fuit ly in le dit obligatiõ a p̃for̃ touts lez coueñts & agreem̃ts in le dit Indent̃,

&

& si ceux pols les premisses extēdeꝛ al close except fuit le question (& Montague in Dine & Manninghams case tient, que (les premisses) extendeꝛ al chose except) mes fuit adiudge, q̄ in le principal case præmissa ne extendeꝛ al chose except, mes sont taunt in effect cōe prædimissa. Et in Pasch. 10. Eliz. vn p fait indent demise ꝯteine t̄re inꝛ Pond medow del vn pt & Todesyard del auꝛ part, & le lessee couenant a repairer les hedges entour les p̄misses; & fuit adiudge q̄ ceo nextendeꝛ al abbuttals, mez premissa sꝛ p̄ise in ley cōe predimissa: issint in l' case al barꝛ tenemēta præd', & tenementa prædict' superiùs dimissa, et præmissa, & prædimissa, ou præconcessa, sont tout vn in iudgmt del ley. Mes Pasch. 36. Eliz. in cest Court inter le Coūtee de Penbroke, & Simons (seruant de Sir Henry Barkley) le case fuit, q̄ le pier del pl' auoit graunt a Sir Henry Barkley l' custody de Staffordale walke, & de Brewcombe walke in l' Forest de Fromselwood p̄ t̄me de son vie: le pl' p s̄ fait cōfirme lestate del dit Sir Henry in Brewcombe walke et graunt Staffordale walke a luy & a les h̄res males de s̄ corps que vn prouiso, q̄ sil succide ascun arbres in les p̄misses, q̄ donq̄s s̄ estate cessera: & puis Sir Henry succide arbres en Brewcōbe walke; & fuit resolue, q̄ ceux pols (les præmisses) extēdeꝛ a ceo, car le fait ad operation in ceo p voy de confirmation, & p̄ cel la præmissa serꝛ p̄ise cibn̄ p̄ præconfirmata cōe præcōcessa, mes ne extendeꝛ al ascun auꝛ pt del Forest, coment q̄ ceo ne fuit nosme deuāt dont le fait nad ascū opation. Et le Chiefe Iustice dit, q̄ quant al succider des arbres, grasse, emblemts, & auꝛs choses annexe al soile, grand variance des opinions sont in nr̄e liures, non solemt vers q̄l, laction de tr̄ns vi & armis serꝛ port pur recou̅y des damages, mes auxy concernāt le ppertie de eux. Et pur ceo si vn disseisie moy, et durant le disseisin il succide lez arbres, ou grasse, ou lez emblemtz creseants sur le t̄re, & puis ieo reenter, ieo auera action de tr̄ns vers luy vi & armis pur les arbres, grasse, emblemts &c. car ap̄s mon regresse, le ley, qn̄t al disseisor & ses suāts, suppose q̄ le franktenemt toutsfoits ad continue in moy: mes si mō disseisor fait feoffemt in fee, done in taile, lease p̄ vie, ou ans, &c. & puis ieo reenꝛ, ieo nauera tr̄ns vi & armis vers eux q̄ux veignont eins p title, car cest fiction del ley q̄ l' franktenemt ad continue touts foitz in moy, nauera relation a faire cestuy q̄ vient eins p title d̄ee tort feso: vi & armis, car in fictione Iuris semper æquitas existit; mes in tiel case, ieo recouera touts les mesne profits vers mon disseisor in m̄ le manor come le

 dissei-

disseisee in tiels cases recouer in assise al commō ley deuant lestatute de Glouc. cap. 1. damages solemēt vers le disseisor. Auxi est desire presume q̄ le feoffee ad done consideration ou recompence al disseisor, & q̄ le lessee ad pay rent a luy, ou auc̄ consideratiō, & p̄ c̄ in reason le disseisor est dēe charge p̄ tout: Mesme la ley, si mon disseisor soit disseisie & puis ieo reenc̄, ieo nalia action de trēs vs le 2. disseisor, p̄ c̄ q̄ le dit fiction del ley q̄n̄t al actiō extend solemēt a mon disseisor, et si ieo punishera le ij. disseisor il serr̄ ij. foits charge, et pur ceo ieo recouera touts les mesne profits vers mon disseisor, ses seruants, & aux, q̄x ont fait trēs p̄ son cōmandemēt & in s̄ dōt, & issint ad le ley souēt foits ēe prise sur cōsiderac̄ ō touts les liures in 9. E. 3. 2. Peter de Vanlores case, 10. H. 6. 14. 19. H. 6 27. 22. H. 6. 21. 32. H. 6. 32. 33. H. 6. 46. 34. H. 6. 30. 37. H. 6. 35. 38. H. 6. 28. 2. E. 4. 18. 9. E. 4. 39. 11. E. 4. 4. 20. E. 4. 18. 21. E. 4. 5. & 74. 22. E. 4. 21. 6. H. 7. 9. 10. H. 7. 27. 12. H. 7. 25. 13. H. 7. 15. b. Et tout c̄ est voier quoad actionem, sed quoad proprietatē le regresse del disseisi reuest l' p̄pty in luy cibū p̄ les emblemēnts, cōe p̄ le grasse & arbres &c. & cibū vs le feoffee, lessee, &c. et l' disseisor, cōe vs le disseisor m̄, car lact de mon disseisor poet alr̄ mon action, mes s̄ act ne poit toller mon actiō p̄pty, ou droit, & in ceo auxy est graund varietie des opinions in n̄re liures, car alcunz quant al disseisor m̄ ont prise diuisity inter choses q̄x vient p̄ lact & operation del disseisor m̄ (come si emble le tre & puis eux fauche & emport, le disseisee apres s̄ reentre ne poit eux p̄nder, car si nul sem̄e la tre, nul blee vst este la, & ceo est pur laduancemēt de agriculture q̄ la tre ne gisera fresh) & choses q̄x vient p̄ lact de dieu, come grasse, arbres, &c.

¶ Mes sur cōsideration de touts les liures ad ēe resolue & adiudge, & tout est vn & nul diuisity inter eux, car le rule et reason del ley est come ad ēe dit, que apres le regresse del disseisee, le ley adiudge quant al disseisor m̄, que l' frankteñt ad continue in le disseisee, quel rule & reason extend cibū al emblements come al arbres ou grasse &c. Mesme l' ley si le feoffee, ou lessee, ou le ij. disseisor emble la terre, ou succide arbres ou grasse, & eux seuer & impoyt ou vende al auter, vncore apr̄s regresse del disseisee il poet p̄nder cibū les emblemēnts cōe les arbres & grasse a quelcunq̄ lieu que ils sont impoyt; car le regresse del disseisee ad relatiō quant al p̄pty, a continuer le frankteneñt vers eux toutz in le disseisee ab initio, et lempoyter eux hors del tre ne poit alter l' p̄pty, & si le disseisee

eux

eux prist, ils serr̄ recoupe in damages vs le disseiso, et illint ad ẽe souent foits resolue ꝛ mise in experience sur consideratiõ dez liures in 27.H.6.1. 37.H.6.6.12.E.4.5.a. 14.E.4.6. 15: E.4 31.2.H.7.1.3.H.7.1.& 6.5.H.7.16.12.H.7.25.28.H.8.Dier 31.b. 1.Eliz.Dyer 173.

¶ Darreinment fuit resolue per tout le Court in le principall caſe, que quaunt le lesſor except les arbres, ꝛ puis ad intention a vender eux, le ley done a luy ꝛ ceux queux voillent achater, power come incident al exception, a enter et a mr̄e les arbres a ceux queux voillent eux auer; car sauns viewo nul poet achater, ꝛ sans entry ils ne poient viewer eux, come in 9.Hen.6.29. home seisie dun mese in vn Burghe ꝛc. deuisable, deuise ceo a vn feme in taile, ꝛ si la feme mozust sauns issue, que son executor poit vender et ceo disposer pur son alme, in ceſt caſe le executor poit per la ley enter in le meason a veier sil fuit bien reparel ou nemy, al entent a scauer a quel value le reuersion est pur vender, quod fuit conceſſum per totam Curiam, 43.Ass.pl.7. le ley done power a cesty q̄ doit repaire vn point, denter in la terre, ꝛ a cesty q̄ ad vn conduit deins la tr̄e dun aut̄ de enter in la terr̄ pur ceo amender q̄t cause require, come est resolue in 9 E.4.35. Jssint est agree in 2.R.2.tit. Barre 237. si ieo graunt a vous mes arbres in mon bois, vous poies vener oue chariots ouster mon tr̄e p̄ carier le boys: ¶ Tẽps E.tit.Grant 41. lex est, cuicunq; aliquis quid cõcedit, concedere videtur & id sine quo res ipsa esse non potuit, et t̄ est principle in ley. Vide 5.E.3.Trañs 13.20.E.3.Auowry 124 8.E.4.5, 12.E.4.10. 18.E.4.14.b. 20.H.6.37. 21. H.7,14.b, 14. H.8.2. Pl.Com.in Manxels caſe, fol.13. Vide in mes Reports, lib. 4.fo.62. & lib.5.2.part, fol.11.

¶ Et q̄t al plea in barre fuit ten⁹, q̄ ceo fuit sans forme ꝛ sans science de bon pleader, ꝛ ceo pur 4. causes: 1. le def. plead leaſe p̄ vie des tenements in q̄r, al pl̄ ꝛ a vn Mary Parker, p force de q̄l ils entront ꝛ fuer̄ ꝛ vncor̄ sont ent seisie ꝛc. quel est auerment del vie de Mary Parker, que sur le matt̄ est q̄ le pl̄ nad riens in les tenemts in queux ꝛc. forsqꝛ ioyntment oue Mary Parker q̄ est in pleine vie nient nosme in le br̄e, ꝛ vncore il ne plead ceo al br̄e, mes conclude et demaunde iudgement si action, q̄ nest pas bñ pleade, car chescun plea couient auer apt conclusion, et oue ceo accord 40. Ed.3.9. 43.Ed.3.27. 36. H.6.18. Vide 22. Ass. pl. 53. 14.H.4.7 4.H.6.27. 18.H.6.32. 9.H.7.2. Jssint si home pleade estoppel, il couient a relier sur t̄ ꝛ ne demaund iudgemt̄ si action:

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2. Le plea conteine double matter, lun al vñe p iointenancie, lauter in barre p lexception & le couenant: 3. in pleadant dñs leale pur vie q̄ passe per liuery et seisin, est mere surplusage a pleader entry des lessees: 4. il ne auerre que les arbres q̄x fuer vend ne fuer dotards q̄x sont exclude hors de exception, mes il auerre q̄ ils de jure pertinebant al Rich. Liford, que nest formal, car il duist in bone pleading auer auerre q̄ ils ne fuer dotards. Mes sur tout le matt appiert sufficient matt al Court a don Judgemt enconter le pl: pur q̄ p le rule del Court le pl prist riens p son bill.

Mich.

Mich. 12. Iacobi Regis.

Le caſe des Tailleurs des habits &c. del Ipſwich.

TRin' 11. Iacobi Regis, Rot. in Banke le Roy Magiſtri, Gardiani, & Communitas Sciſſorum & operatorũ pannorũ villæ Gipwic' in Comit' Suff. port action de Det pur iiij. l. viij. s. iiij. d. vers William Sheninge, & count q̃ lou nostre Sire le Roy p ses lres Patents ad incorporate les pl' p le dit nosme, & graunt q̃ eux avoient plenã poteſtat' & authoritat' facere & conſtituere rationabiles leges, ordinationes, & conſtitutiones, in ſcript', quæ eis viderentur bona, ſalubria vtilia, honeſta, & neceſſaria, ſecũdũ eor' diſcretionem pro bono regimine & gubernatione &c. ſocietatis prædict' &c. & a imposer fines & amerciaments p breach des dits leyz &c. & recite le statute de 19. H. 7. cap. 7. p quel est enact, q̃ nul Master, Gardens, & Society des Crafts & Misteries assume sur eux a faire ascũ acts ou ordinances, ne a execut ascũ acts ou ordinances in exheredationẽ ſeu diminutionẽ prerogatiuæ vel aliorũ aliquorũ, nec contra cõmune profic' populi, niſi ijdẽ actus & ordinationes examinat' & approbat' forent per Cãcellar', Theſaur' Angl' capital' Iuſtic' vtriuſq; Banci, vel tres eorũ, vel alitèr corã Iuſtic' Aſſiſæ in eorũ itineribus &c. ſub pœna forisfact' 40. li. pro quolibet tempore quo ipſi in contr' facerẽt: Et puis le dit Corporation in fin le 4. an fist divers cõstitutiõs, & (int' auters) q̃ nul person exercising ascũ dez ditz tradez deinz le vill de Ipſwich pred' custodiet ascũ shop ou chãber, ou exerciset lez ditz facultiez ou ascũ d eux, ou accep-

accepterẽ vn appñtice ou iourneyman iesq; ilz ont p̃sent eux m̃ aux Maisters ou Gardens del dit society p̄ le tẽpz esteãt, ou ascun 3. d̃ eux, & ferra proofe q̃ il ad serue 7. ans al meins come apprentice, & deuant q̃ il serr̃ admit p eux desr̃ sufficient workman, & si ascũ offend in ascũ pt de c̃, q̃ il forfeiterẽ & payerẽ aux ditz Masters, Gardens, & society auãtdit p̄ chescun tiel offence v. markes, et a leuier c̃ p voy de distres, ou p acc̃ de Det, &c. le quel (int̃ aur̃s) fuit allow solonq; le dit act p les Justices Dassise de m̃ le County solonq; le dit act de 19.H.7. Et q̃ le dit Willm̃ Shemyn Tailor vsant le trade dũ Tailor, puis lez ditz orders faitz & ratifie cõe est auãtdit, s. 10. Octob. an' regni Regis nunc 10. vient al dit vill̃ de Ipswich, & la adõq̃s vse l̃ trade dũ Tailor p le space d̃ xx. iours deuãt q̃ il ad p̃sent soy m̃ aux dits Maisters & Gardens ou asc̃ 3. de eux, ou ad fait proofe q̃ il ad serue come apprentice p 7. ans in le dit trade, & deuãt q̃ il fuit admit p lez ditz Masters & Gardens ou 3. de eux dẽe sufficiẽt workman, per qd' actio accreuit eisdẽ Magistris, Gardianis, & communitati dañ del dit Henry lez ditz iij. li. vj. s. viij. d̃. &c.

Le def. plead, q̃ il fuit apprentice p le space de 7. ans, viz. à 1. die Septemb. ann. Regis nunc 1. vsq; 2. Septemb. ann. 8. a vn Henry Backet in le art dũ Tailor &c. & q̃ 9. Septemb. ann. 10 Iac. Reg. Anthony Penny arm̃ inhabitãt in Ipswich retein luy dẽe s̃ domestical s̃uant a s̃uer luy pur vn an, & q̃ il deins m̃ le tẽpz p le cõmandem̃t del dit Anthony fesoit diũz vestiments et garments p̄ luy, sa feme & childrẽ, cõe bñ a luy list, q̃l est m̃ le vse & excercise del trade del Tailor dõt lez pl' oũt declare: sur q̃ lez pl' demurre in ley. Et in cẽ case sur argum̃t al barr̃ & al bẽch diũs pointz fuerẽ resolue: ¶. 1. Que al cõmõ ley nul hõe poit ẽe p̃hibit a ourer in asc̃ loial trade, car le ley abhorre oisiuete le mere d̃ tout malifice, otium omniũ vitiorũ mater, & principalm̃t in ieunez, queux doiẽt in lour ieunes (q̃ est le tẽpz de lour semẽcer) appñder loial sciẽces et trades, q̃ sõt p̃fitable al weale publike, & dõt ilz poiẽt moissouner le fruit in lour vieille age, car Ieunesse oiseuse, vieillesse disetteuse; & p̄ c̃ le cõmõ ley detest toutz Monopoliez, queux p̃hibit ascũz a ourer in asc̃ loial trade: & c̃ appiert in 2.H.5.b. vn dier fuit oblige q̃ il ne vserẽ lez Dierz craft p 2. ans, & la Hull tiẽt, q̃ l' obligac̃ fuit encont̃ le cõmõ ley, & p Dieu si le pl' fuit icy il irr̃ al prisõ tãq; il fait fine al roy. Issint & p̄ m̃ le cause, si vn agricole soit ly q̃ il ne sem̃a s̃ t̃re, le obligac̃ est encõt̃ le cõmõ ley. Et vid' 7. E.3.65.b. & si cẽy q̃ assume s̃ luy a ourẽ soit impite, s̃ ignorãce

est

est sufficiēt punishm̄t a luy, car imperitia est maxima mechanicorum pœna, & quilibet quærit in qualibet arte peritos: & si aſcun impryſt sur luy a ourer, & miſkait ceo, action sur le caſe gist vers luy. Et leſtatute de 5. Eliz. cap. 4. que phibite cheſcun perſon a vſer a ou exerciſer aſc̄ Craft, Miſtery, ou Occupatiō, sinon que il ad ēe apprentice per 7. ans, ne fait purvieu ſolemēt al entent que artificers ſerē ſkilful, mes auxy que ieunes ne ſē in lour ieuneſſe oiſeuſe, mes traine & educate in loial ſcience & et trades: Et per ceo appiert, que ſans act de Parliam̄t nul poit ēe in aſcū manner reſtraine a ourer in aſcū loyal trade. Auxy le common ley ne prohibite aſcun pſon a vſer pluſors artificers ou miſteries a ſon pleaſure, nemo prohibetur plures negotiationes ſiue artes exercere, tanq̄ ceo fuit phibite p̄ act de Parliament de 37. E. 3. cap. 6. q. que les artificers & gents de miſtery ſoy tient cheſcun a vn miſterie, & que nul vſe auter miſtery mes cel que il ad eſlieu, mes maintenant ceſt reſtraint de free trade et traffique fuit troue prēiudicial al weale publique, & pur ceo al prochein Parliam̄t fuit enact, q̄ touts gents ſerē cy free come ilz fuer̄ a aſcun temps deuāt le dit Ordinance.

¶ 2 Que le dit reſtraint del dek. p̄ pluis que le dit act de 5. Eliz. ad fait, fuit enconē ley, & pur c̄ intant q̄ leſtatute nad reſtraine luy aps q̄ il ad ſerue come apprentice p̄ 7. ans a exerciſer le trade del Tailor, le dit ordinance ne poit luy phibiter a exerciſer ſon trade, tanq̄ il ad ſoy p̄ſent deuant eux, ou tanq̄ ils allowant luy dēe vn workm̄, car ceux ſont enconē le liberty & freedom del ſubiect, & ſont meanes d extortion in trahant deniers de eux, ou p̄ delay, ou aſc̄ auē ſubtill deuiſe, ou d oppreſſion des ieunes tradeſmen p̄ les auncient & rich de m̄ le trade, nient p̄mittāt eux a ourer in lour trade frankm̄t, & tout ceo eſt enconē cōmon ley & le cōmonwealth: Mes ordinances pur le bone order & gouernm̄t des homes de trades & miſteries ſont bone, mes nēy a reſtreiner aſcun in ſ̄ loyal miſtery.

¶ 3. Fuit reſolue, q̄ le dit branch del act d 5. Eliz. eſt entēd dun publike vſe & exerciſe dū trade a touts q̄ux voill uſer, & nemy de ceſty q̄ eſt vn priuat Cooke, Tailor, Brewer, Baker, &c. in le meaſou daſcun pur le vſe dun family, et pur ceo ſi le dit ordinance vſt ēe bone & conſonant al ley, tiel priuate exerciſe & vſe nauoit ēe deins ceo, car cheſcun poit ourer in tiel priuate manner, comēt q̄ il ne vnques auoit ēe apptice in le trade.

¶ 4. Fuit

Case des Taileurs de Ipswich.

¶ 4. Fuit resolue, q̄ lestatute de 19. H. 7. cap. 7. ne corrobo-
rate aucun des ordinances fait per aucun Corporatiō q̄ sont
illint allowe & approue come lestatute parle, mes layse cur
dee affirme come bone, ou disaffirme come illoyall per la ley:
le sole benefit q̄ lesd corporation acquire per tiel allowance
est que ils ne incurgeront le penaltie d 40 li. mention in lact
ils mettront in dce aucuns ordinances que sont encounter
le Prerogative le Roy, ou le common profit del people &c.
Et Judgement fuit done, quod quærentes nihil caperent per
billam.

Mich.

Mich. 12. Iacobi Regis.

Edward Sauels caſe.

EDward Hamond port Eiectione firmæ vers Edw. Sauel & W. Bowes, Proeo viz. quod cum quidam Iacobus Smyth primo die Aprilis anno regni Regis Iacobi Angliæ 11. apud Leds in com' Ebor' dimiſit præfat' Edw. Haymond vnum meſuag' cum pertin' in Leds pred. & vnum clauſ. vocat. Douecot cloſe cont' 3. acr' eidem meſuag. ſpectan' ſeu pertin' in Leds pd̄ pur terme de 3. ans &c. & count ſur eiectment &c. l' defendant plead Non culp. & les Jurors trouōt, quād al meſe. q̄ le def. fuit nīēt culp̄ & q̄ād al dit, cloſe appel Douecot cloſe le def. fuit troue culp̄.

¶ In arreſt de Judgement fuit moue, que Eiectione firmæ ne giſt dun cloſe coment que il ad certaine noſme, mes doit ēe des tants des acres, et coment que il dit in ceſt caſe containant 3. acr̄, vncore il ne monſtre de quel nature les acres ſont, come terre, pree, paſture, bois &c. & le certaintie couiēt ēe cōprīſe in le count, p̄ ceo q̄ il recouera le poſſ. p̄ Habere fac' poſſeſſionē, & inſuer̄ le forme des aūcs dīēs de autiel nature, cōe Dr't de gard, ou Eiectm't de gard, ou ſēblabl', ne ſ̄t port de vn cloſe p̄ ētain noſm̄, mes couiēt ēe p̄ certainty des acr̄s cōteinīt le quality del tr̄, cōe de tr̄, pree, paſtur̄, bois, &c.

Et coment que per bone order le pluis digne auera le prece-dencie, & serr preferre deuant meins digne, Et chose entier serr preferre deuant part &c. uncore si le dit order ne soit p̄-cisement pursue, les Judges ne voillent abater briefe ou count p̄ ceo. Vide 6.E.3.42.& 9.E.3.3. Et pur lauantdit ex-ception Judgement fuit arrestus.

Mich.

Mich. 12. Iacobi Regis.

Benthams case.

Marshe port brief dannuity vers Bentham, & les parties descendont al issue que fuit trie pur le pl, & troue les arrerages &c. mes le Jurors ne assessont ascun damages ou costs, quel verdit fuit imperfect, & ne poit estre supplie per briefe denquirer des damages le pl release ses damages & costs, & sur ceo ad Judgement; sur que le def. port briefe de error, & assigne le error auantdit, s. le insufficiencie de verdit; sed Iudicium affirmatur, quia le pl ad releas ses damages & costs que est pur le benefit del def. Vide Dyer 22. El. 369. 370. ou in briefe de Eiectione Custodiæ terræ & hæredis les Jurors assessont damages intirement, que fuit insufficient, car pur le heire ne gist, uncore il release ses damages & ad Judgement pur la terre. Nota insufficient assessement des dammages & nul assessing est tout un.

Mich. 12. Iacobi Regis.

Doctor Foſters caſe concernant Recuſants.

William Shoyle exhibite vn informacion vers Richard Foſter doctor de phyſicke, que le dyt Richard Foſter del Pariſh de Saint Anthony in warda de Cordwayner London 20. Iunij anno Domini Regis nunc 11. fuit del age de xvj. ans & ouſter, & del dit xx.iour de June ieſqs x. iour de May adonqs prchein enſuãt viz. p le ſpace de xj. entier moys & amplius ne repaira a ſon eſgliſe parochiell auantdit, ne al aſcun auter Eſgliſe, Chappell, ou vſuall lieu de Common prier ou diuine ſeruice, mes per totum tempus prædictum voluntarie & obſtinate abſque aliqua cauſa rationabili abſtinuit ab eiſdem contra formam ſtatuti in huiuſmodi caſu editi & prouiſi, per quod actio accreuit eidem domino Regi ac præfato Willihelmo Shoile qui tam pro Domino Rege quam pro ſeipſo ſequitur ad hẽndum & exigendum de præfato Ricardo Foſter 220.li.legal' monetæ Angliæ, viz. pro quolibet menſe &c. 20. l'. &c. vnde idem Willms Shoile petit inde tertiam partem, iuxta formam ſtatuti prædict. A quel Doctor Foſter plead, que le dit William Shoile qui tã &c. pro prædictis 220.li. in eadem informatione content' ſeu aliqua inde parcella proſequi non debet, car il dit, que per vn act de parliament Anno 23. Reginæ Eliz. fuit enact, que cheſcun perſon ouſter lage de xvj. ans q̃ ne repaireẽ al aſcun eſgliſe &c. mes abſentera luy meſme enconter leſtatute de Anno 1. Elizab. pur le vniformity de Com-

Common Prayer, & existens inde legitime convictus forfeiter al dit iades roigne pro quolibet mense post finem del dit Session de Parliament &c. 20. l. &c. et ouster que toutes les forfeitures dascuns summes dargent limit per le dit act serr̄ divide in 3. equall parts, cestascauoir, un tierce part al dyt iades Roigne a son proper eops. et auter tierce part del dyt iades Roigne pur le reliefe des poures del Parish &c. et lauter tierce part a tiel person que voille suer pur ceo in ascun Court de Record per Actionem debiti, billam, quærelam, vel informationem &c. et puis per auter act de Parliament Anno 28. del dyt iades Roigne fuit enact, que chescun offendor in nient repairant al Esglise al Divine Service &c. encounter le forme del dit act de Anno 23. que donques in apres happer̄ destre un forfaiture convict, in tiels Termes de Pasch. & S. Michael. Archangeli. que serra procheine apres tiel conviction, paier̄ in receipt del Eschequer solonque le rate de xx. l. pur chescun moys que serr̄ containe in lenditement sur que tiel conviction fuit, et auxy pur chescun moys puis tiel conviction sans ascun auter inditement paier̄ in le receipt del Eschequer &c. et si ascun default serr̄ in ascun part del payment &c. que adonques et cy tost le dit iades roigne puit per proces hors del Eschequer prender, seiser, et enioier toutz lour biens et deux parts de lour terres, tenements, et hereditaments, leases et fearmes &c. Et lou per le dit act de Anno 23. Elizab. un tierce part des forfeitures pur non venier al divine service fuit limit aux poures &c. per le dyt act de Anno 28. est ordaine que serr̄ loyall al Seignior Tresurer, Chauncelor, et Chiefe Baron del Eschequer &c. a assigner et disposer ceo &c. Et ouster, per lact de 35. Eliz. que pro magis festina (Anglice more speedy) leuatione et recouerie pro et per le dyt Roigne omnium & singularum pœnarum, debitor', forisfactur', et paiments, que adonques in apres deveigner̄ payable virtute eiusdem actus de anno 35. Elizab. vel dict' statut' fact' in Anno 23. (inter alia) inactitatum fuit authoritate eiusdem Parliamenti de Anno 35. quod omnia & singula dicta pœna debit', forisfactur', & solutiones forent & potuissent esse recuperat' & leuat' ad vsum dictæ Domminæ Reginæ per actionem debiti, billam, quærelam, siue informationem vel aliter, in Curia de banco Regis, Communi banco, vel Scaccar', in tali modo & in omnibus respectibus prout per ordinarium cursum communium legum aliquod aliud debitum solubile (Anglice due) per

aliquam talem personã, in aliquo alio casu, foret vel potuisset esse recuperat' siue leuat' &c. et ouster que per mesme lact de Anno 35. Eliz. fuit purueu que vn 3. part des penalties deste recouer per mesme lact serr̃ dispose aux poures solonque lact de 28. an auantdit: Et idē Richardus vlterius dicit, quod per prædict' statutū de anno 35. supradicto apparet, quod omnia & singula pœna, debita, forisfactur', & solutiones, quæ post præd. Actū de anno 35. supradicto accrescerent vel solubil' forent virtute eiusdē Actus vel prædict. statuti de anno 23. concernant Recusants, forent & possent recuperari & leuari ad vsū præd. Regiæ Maiestatis &c. quodque nulla tertia pars pœnarum, debitorum, forisfactur' & solutionū pred. per præd. actū de anno 35. alicui personæ quæ pro eadē sequi voluerit limitat' vel prouis. existit, Et hoc idem Richardus paratus est verificare, vnde petit iudiciū si prædict. Will'us Shoyle, qui tā &c. pro prædict. 220. li. &c. prosequi debeat: Sur quel plea Lattorny le Roy demurre in ley. Et 6. obiections fuer̃ faits per le Councell del defendant encounter ceste information. 1. Que le defendant nest vn tiel person que est deins le dit act de 23. Eliz. 2. Que lenformer nest tiel person que poet exhibite alcun tiel information, sur le dit act de 23. Eliz. 3. Que le Judgement que serr̃ done in ceste case nest deins le dit act de 23. Eliz. 4. Admittant touts ceux points enconter le defendant, fuit ouster obiect que p le dit act de 28. Eliz. le branche que done vn populer action est tolle. 5. Si le dit act 28. Eliz. ne tolle ceo, que le dit statute de 35. cap. 1. ad abrogate ceo. 6. Que si le defendant serr̃ charge al suite del enformer, il poet estre auter foits charge al suite le Roy, & issint deux foits charge.

Al primer le person delinquent est describe per lact p vn attribute que le defendant fault, car les parols del dit act de 23. Eliz. sont; Euery person aboue the age of sixteene yeares, which shall not repaire to some Church, Chappel, or vsuall place of Common Praier, but forbeare the same contrary to the tenor of a Statute made in the first yeare of her Maiesties raigne for vniformitie of Common Prayer, and being thereof lawfully conuicted, shal forfeite to the Queenes Maiestie for euery month &c. 20. l'. &c. Per quel appiert que nul person incurrera ceste forfeiture, si non que il soit deuant loialment conuict, issint que vn Recusant conuicted est solement deins le purueu de ceste act, & nappeirt in tout le record que le dit Richard Foster ad ẽe conuict, & a ceste cause il nest vn person deins ceste act; Et penall Statutes sont dẽe pursue (principalment in informations)

mations) strectment & in terminis solonq; le purueu del act, et pur ceo Pasch. 20. Eliz. vn case fuit adiudge in Leschequer, que ou information fuit exhibit et mẽe le vsurio⁹ contract in certaine, sur quel appiert que ouster le summe de x.l. fuit reserue et receiue p̃ le lone de C.l. enconter le forme del statute &c. et coment que appiert que ceo fuit corrupt, et que il conclude contra formam statuti, vncore intant que il ne expressement dit que ceo fuit per corruptam accommodationẽ solonque les parols del penall Statute, lenformation fuit adiudge insufficient: Issint in le case al barre, intant q̃ le statute dit, q̃ chescun person &c. esteant loialment conuict forfeitra, il duit de necessitie dauer mẽe que le dit Doctor Foster fuit loialment conuict: Vide Dyer 3. Mariæ 131. 2. Eli. 183. 20. El. 367.

2. Que nul poet informer sur lact de 23. forsque pur le Roy tantsolement, car in le former patt de cest act est purueu, That euery person that shall say or sing Masse &c. shal forfeit the summe of 200. markes, and that euery person that shall willingly heare Masse, shall forfeit the summe of one hundred markes &c. et aps vient in mesme lact le clause de forfeiture de xx.l. per le moys al roigne, & puis inflict x.l. per le moys pur cesty que keepe vn Schoolemaster, et donques ensue le clause del distribution des forfeitures, And that all forfeitures of any summes of monoy limited by this act shalbe diuided into three equall parts &c. Et fuit obiect que cest clause extende solement aux dits forfeitures de CC. marks & C. markes &c. queux penalties ne fuer̃ done al ascun person in certaine, mes indefinitement & generalment que ils ser̃ forfeit, & p̃ ceo cest clause de distribution referre al eux: mes le forfeiture de xx.l. per le moys pur recusancie fuit expressement done al roigne, et issint ne fuit ascun auter des forfeitures, et pur ceo cest clause de distribution ne extendra a c̃ que fuit deuant al roigne, mes a ceux penalties queux fuer̃ layse indefinitement et done a mullu⁹.

3. Les parols del dit act 23. sont, being thereof lawfully conuicted, et conuiction doit ẽe, ou per verdit, ou confession, &c. & ne poet extender al Judgement sur demurrer come in nostre case, car la nest ascun conuiction, car touts foits cõuiction doit preceder Judgemẽt: & pur ceo, in nostre lures le differences inter Clerke conuict et Clerke attaint est, que cesty que est conuict per verdict ou confession &c. et prist son Clergy deuant Judgement, est appel Clerke conuict, & cesty

que

que prist son Clergie apres Judgement, est dit Clerke attaint, & oue ceo accord Stanford fol.138.C. que tyent que il y ad deux maners des Clerks, cestascauoir, Clerke conuict & Clerke attaint: Clerke conuict est cesty que pria son Clergie deuant Judgement done sur luy del felony, et ad son Clergie a luy allow &c. Clerke attaint est cesty que pria son Clergie apres Judgement sur luy pur felony: mes in le case al barre Docter Foster est Recusant (si Judgement serr̄ done vers luy) attaint, & nemy conuict: et Stanford fo. 185.B. dit, issint est Clere in mon Judgement que il ne poet ẽe appel Clerke conuict, tanque il a son mise ad verdit passe vers luy: et sur ceo fuit dit, que si le defendant ne voille responder al inditement issint que il est condemne per Nihil dicit, que ceo est hors de cest statute que parle solement del conuiction, et pur ceo sur lestaeute de 1.E.6.cap.12. que ouste Clergie in diuers cases, les parols de quel sont, no person or persons that shalbe hereafter in due forme of Law attaint or conuict, que ceux parols nextend a cesty que ne voille respondre, Vide Stanford fol.126.a. Issint que le case al barre est casus omissus hors del dit act, car icy sur le demurrer sur le plea del defendant nul conuiction poet estre deuaunt Judgement, mes (si le ley seruera pur le informer) Judgement serra done sans ascun conuiction dont lestatute parle, & tiel penal act ne serr̄ prise per intendment ou equitie.

4. Mes admittant que serra conuiction deins lestatute, donques per le dit act de 28.Elizab. tout le penalty de xx. l. per le moys est done al roigne, car les pols sont, That euery such offẽdor in not repairing to diuine seruice &c. as hereafter shal fortune to be once conuicted shal in such of the termes of Easter or Mich. as shall next happen after such conuiction, pay into the receipt of the Exchequer after the rate of xx.l. for euerie moneth which shalbe contained in the indictmẽt wherupon such cõuictiõ shalbe; and shal for euery moneth after such conuiction, without any other indictment or conuictiõ, pay into the receit of the Exchequer &c. after the rate of xx.li. the moneth &c. and if default be made &c. the Queenes Maiestie shall and may, by proces out of the Exchequer, seize all the goods and two parts of the lands &c. per que appiert, que tout le penaltie pur Recusancy est done al Roigne, et per consequence lenformer est exclude.

5. Lestatute de 35. est pluis fort, car ceo per expres limez done

done tout le penalty done per le dit act de 23. pur Recusancie al Roigne, le letter de quel act est, And for the more speedy leuying and recouering for and by the Queenes Maiestie of all & singular the pains, duties, forfeitures, and payments which at any time hereafter shall accrue, grow, or bee paiable by vertue of this act, or of the Statute of the three and twentith yeare &c. be it enacted, that all and euery the said paines, duties, forfeitures & payments shal & may be recouered and leuied to her Maiesties vse by action of debt, bill, plaint, information, or otherwise, in any of the Courts commonly called the Kings Bench, Common Pleas, or Exchequer, in such sort & in al respects as by the orninary course of the Common Lawes of this Realm any other debt due by any such person in any other case should or may be recouered or leuied: in que, ceux parols in le preamble sont dẽe obserue. 1. For the more speedie recouering and leuying for and by the Queenes Maiesty; icy est le person expresse que recouera. 2. Of all and singular the paines, queux parols conteine queux choses le roigne recouera, cestasauoir, all and singular the paines, &c. & generale dictum generaliter est intelligendũ. 3. corps del act, be it enacted, that all and euery the said paines, &c. shall and may bee recouered and leuied to her Maiesties vse; et si touts les paines & chescun de eux serr̃ recouer al vse de roigne, donq̃s ensuist que lenformer recouera riens; & pluisors cases fuer̃ mise ou vn darreine act tollera vn former, & le ground fuit prise que leges posteriores priores contrarias abrogant: mes pluis particulerment & pluis al purpose deux causes fuer̃ alledge p̃ quoy les darreine Statutes de 28. & 35. Eliz. tolle & abrogate le distribution del act de 23. Eliz. &c. le primer, q̃ quant vn act de Parliament done power ou interest al vn certaine person, p̃ cest expresse delignation del vn, touts auters sont exclude, com̃ q̃ tiel Statute soit in laffirmatiue, & issint est tenus in Pl. Com. in Stradlings case 106. b. q̃ ou le statute de 31. E. 3. cap. 12. pruuieu, que erroz in lechequer serr̃ correct & amend deuant le Chauncelor & Treasorer, et pur ceo ne poet ẽe correct deuant ascun auter, et la general rule est mise, que quant vn chose est dẽe fait deuant in person certaine per ascun Statute, ceo ne poet ẽe fait deuant ascũ auter, & vncore lestatute de 31. E. 3. est in le affirmatiue: issint in le case al barre le certeine delignation del roigne est vn absolute exclusion de touts auters, quia inclusio vnius est exclusio alterius: & vn case fuit cite hors del Reportes de Iustice Dallison in anno 3. Eliz. que instant que lestatute de 8. H. 6. c. 9.

De

de forcible entry deligne Justices de peace a faire restitution, per ceo (coment que lestatute soit le affirmatiue) auters sont exclude, & pur ceo neque Justices de oier & termin, ou gaole deliuery &c. ferr ceo: Vide 27.H.8.13. in Mast, 23.ass. 17. in redisseisin 4.Eliz.211. cõmission sur 28.H.8. de Admiralty &c. Le 2. cause fuit, in respect del generalty des pols, cestaſt auoir, all and singular the pains &c. and all and euerie the paines &c. queux parols implyont vn negatiue, car si le Roigne recouera all and singular, and all and euery the paines &c. donques nul auter person recouera ascuns de eux, & qui omne dicit nihil excludit, & generale tantum valet in omnibus quantum singulare in singulis: & sur ceo ilz citont le case in an. 33.Hen.8.fol.50. que ou les parols de 27.H.8.cap.27. sont, That all grants by letters patents to be made for terme of life or yeres of any office concerning the lands within the surucy of the Court of Augmentation &c. shalbe sealed with the great seale of that Court; & semble la q̃ cest imply negatiue, issint q̃ si le grant soit desouth le grãd seale Dengl, cest void: & Amy Townsends case Pl.Com.113. & pluſorz auterz cases fuer mise a tiel effect, qux ieo de purpose ay icy omise.

6. Fuit obiect, que si le defendant serr charge al suit del informer, il poit ẽe per force des dits deux statutes, & principalment de lestatute de 35.Eliz. charge arere, et issint 2. foits charge, & Nemo debet bis puniri pro vno delicto: & le cas ad le greinder mischiefe p cest q̃ per lestat de 3.Iac.Reg.ca 4. que nul trauers al ascun inditement de Recusancy serr allow, mes al direct point de non vener al esglise, ou q̃ le party ad conforme luy m, issint que il ne poet pleader q̃ auter information est depending, ou que il est auter foits conuict &c. al suit del informer.

¶ Quant al primer obiection fuit responde et resolue per tout le court, que il poet este conuict in mesme lenditement ou information preferre ou exhibite vers luy, et issint fuit tenus per touts les Iustices Dengliterre assemble a Russell house, ou Sir Iohn Puckering adonques Garden del grand seale adonques demurre. Vide 10.E.4.11. & 7.R.2 tit. Barre 241. et ceo estoit bie oue les parols del statute, car il ne forfeitra riens deuãt conuiction, & issint ad ẽe le ley touts foits prise sur lestatute de 3.H.6.cap.3. que enact que si Customer &c. soit duement attaint ou conuict &c. forfeitet al roy &c. et touts auters statutes queux ont tiel forme de penning, et nest possible que il poet ẽe conuict sans suit: & conuict in cest

case

case ler̄ prise p̄ attaint car il ne forfeiter̄ riēs tanqz Juge-ment; Vide F.N.B.73.d.& 30.E.3.1.b.in attaint,& multz liures, ou conuict est prise p̄ attaint, Vide deuant in le cas de Alexander Bowlter de Clergy.

¶ Quant al 2. point, fuit respondu & resolue, que le dyt brauncy de 23.Eliz.de distribution, extender̄ bien al clause del penalty pur Recusancy, come al clause de disant & oyer des masses &c.1.Pur ceo que tout est vn a dire forfeiter̄ generalment,& forfeiter̄ al Roigne, car le roigne auera eux in ambideux cases sans pluis dire,& Expressio eorum que tacite insunt nihil operatur. 2. Diuers acts de parliament done le penalty forf.al roy & vn̄ apres font distributiō del penalty a vn auter̄, cestascauoir, a cesty q̄ voet suer, cōe lestat de 3. H.6.ca.3.3.H.7.ca.7.&c. 3. Per 2. Judgemēts in Parliamēt, cestascauoir,in les dits acts de 28.& 35.Eliz.car per mesme les acts le distributiō fait per lact de 23.de le penalty de xx. l.per le moys pur Recusancy est quodam modo alter, quel proue que le dit clause de distribution in 23.Eli.extēd al Recusancy &c.

¶ Quant al 3.fuit vnement resolue, que cesty vers que ascun Judgement est done,ou sur Nihil dicit,ou sur insufficient plea plead & demurrer sur ī, est conuict deins le purueu de cest statute, car voyer est que non sequitur que vn est conuict ergo il est attaint ou adiudgee, mes est bone consequence que vn est attaint ou adiudgee ergo il est conuict,car cesty que est attaint ou adiudgee est conuict & pluis, & ex vi termini(ceo)extend a cestuy que est condemne, come Cicero 7 Verr', conuincere aduersum testibus.Idem 2.in Catilinam, Conscientia conuictus reticuit. Et ou per lestatute de 8.H.6.cap.9. est purueu, que si le party grieue recouera per Assise ou per action de trās,& troue soit per verdict ou in auter maner in due forme del ley,que le party defendant enter oue force in terres & tents &c. que le party recouera ses dammages a treble vers le defendant.Et in 6.H.8.le case fuit,que in tiel action port per le party greue si lattorney le defendāt plead Non sum informatus, le plaintife recouera ses dammages a treble,car ce parol(troue)ad 2.significations,s.vn per Jurors, et auter per les Judges;& le trouer des Judges,s. lour Judgement sur Non sum informatus, ou sur Nihil dicit, est deins le dit act,& issint fuit adiudge in briefe de Error an. 4.& 5.Phil.& Mar. & tout ceo est report per Bendloes Serieant del ley. Issint ieo meisme oye le Seignior Dyer Mich.14.

&

& 15. Eliz. a dire in le Court de Common Pleas, que illint Judgement fuit done in tiel case p les treble damages s le default del def. quia fatetur facinus qui iudicium fugit; & m le ley il dit si le def. plead insufficient barre q sur demurrer est adiudge vers luy.

¶ Quant al 4. fuit resolue, que lact de 28. Eliz. nad pas tolle le libertie que lenformer ad per lestatute de 23. pur diuers causes. 1. Le title est, for the speedie execution of certaine branches of the Statute made in the 23. yeare &c. illint que les fesors del act de 28. ne intend my alcun abrogation, mes le pluis speedy execution de diuers branches del act de 23. 2. Lact de 28. done pluis speedy execution solemt al suit le Roigne, s. sur inditement, car le Roigne pur tout le penalty nauoit remedy per lestatute de 23. Eliz. forsque solement per inditement, car lestatute fait ceo inquirable &c. deuant diuers Justices nosme in lestatute, & tyel inquirie est touts foits per Inditemt; Auxy in m lact la est prouiso, That euery person guilty of any offence against this statute, which shal, before he be thereof indicted, or at his arraignment or trial before Iudgement, submit and conforme himselfe before the Bishop of the dioces &c. or before the Iustices where he shalbe indicted, arraigned, or tried, &c. shalbe discharged &c. per quel appiert que en cest nouel case de forfeiture, le parliament ne done al Roigne auter remedy pur recouer tout le penalty mes per voy de Inditement: Et lestatute de 28. El. extend solemt al suit de Roigne per voy de Inditement come appiert p les parols de mesme lact, cestascauoir, after the rate of xx. li. for euery month contained in the indictment, & per diuers auters branches del act, & nosment q proclamation serr fait sur lenditement &c. dappearer &c. illint que cest act ne done al Roigne alcun auter remedy que el auoit deuant per voy de inditement, mes p le pluis speedy proceeding sur le primer fundamentall remedy: Mes ne done al informer pluis speedy proceeding, mes layse luy a son former proceeding. 3. Cest act de 28. Eliz. ne done le penalty al alcun nouel person a que ne fuit done deuant, car lact de 23. done le forfeture al Roigne &c. 4. Les parols de cest act sont, Euery offendor that shall hereafter fortune to be once conuicted shal &c. pay xx. li. for euery month contayned in the indictment, illint q le sence est, euery offendor that shall fortune to be once conuicted vpon any indictment &c. shall pay &c. xx. li. for euery month contained in such indictment: & per ceo appiert que ceo extd

sole=

solement al case de Inditemēt pur le Roigne, & nemy al popular Action ou Information. 5. Sur mesme ceux parols le defendant de prendra benefite de cest clause a barrer le Informer sinon que il auerre que il fuit conuict al suite le Roigne, car les parols sont, that shall hereafter fortune to bee conuicted, issint que si son fortune nest dēe conuict al suit le Roigne, il nest deins cest Act, mes est layse al Informer. 6. Lestatute est in le affirmatiue, et regularement Statutes in laffirmatiue ne tolle precedent acts affirmatiue, sinon que il soit in certaine speciall cases, come serē dit in apres: Mes lestatute de 28. Elizab. (come fuit bien obserue) ad alter lestatute de 23. Eliz. in vn materiall point, cestasauoir, quant al iurisdiction in ceux parols, That euery conuiction hereafter for any offence before mentioned shall bee in the Court commonly called the Kings Bench, or at the Assises, or generall Gaole Deliuerie, and not elsewhere &c. Quel clause sans question, esteant generall, extend non solement al suite le Roigne, mes al suite auxy del Informer: Et le dit act de 35. extend solement al suite le Roigne, mes done a luy auter remedy q̄ p inditemēt, s. per action de debt, bil, pleint, information, & in auts courts, cōe in le Cōmon pleas & Lescheq̄r, & issint quant al suit le Roigne in auts Courts lestatute de 28. est alter, mes ē ne touche le popular suit del informer, ne alt lestatute de 28. concernāt le restriction al Courts q̄nt al informer, ne lact de 3. Iac. ca. 4. q̄ done iurisdicē al auts Justices come al Justices de Peace, ne alter ē quant al informer, car cē act extend solemnt al suit le roy p voy de inditement, s. p inquiry solemnt, & ne fait alcū mention del suit del informer, mes layse ceo come fuit deuant: issint q̄ cest act de 28. Eliz. confine lenformāt solemnt al Court del bank le Roy, ou de Justices dassise, ou general Gaole deliuy, & oue parols negatiue, s. & nemy ailours.

¶ Quant al 5. obiection, lact de 35. ne abrogate le statute de 23. quant al action popular, pur 4. causes. 1. Deuaunt cest act (come ad ēe dit deuant) remedy fuit done al roigne p voy de inditemnt, & al informāt p bil, pleint, ou information, ore cest act intend a doner plus speedy remedy al roigne solemnt & nemy al informāt, et issint sont les parols del Pamble for the more speedy recouering for and by the Queenes Maiestie of all and singular the paynes &c. Issint que le purpose de cest act ne fuit a ouster Lestatute de 23. mes a ouster delay, et a

doner al Roigne pluis speedy recouery que el auoit deuant. 2. Les parols del corps del act sont, That euery of the sayd paines &c. shall and may bee recouered to her Maesties vse, &c. Ceste acte ad fait iij. alterations. 1. In le manner de son remedie, cestascauoir, ou son remedie fuit per Inditement deuant, ore le Roigne poit auer action de Det, Bill, Plaint, Information, or otherwise: Le 2. alteration est concernaunt Courts, le Roigne nest ore confine al Banke le Roy, ou al Justices Dassise, ou generall Gaole deliuery, mes ore poet suer in Common Banke, ou Eschequer, a son pleasure. Le 3. alteration fuit, concernant le charging dun person al suite le Roigne que ne fuit charge a deuant, car al dit assembly des Justices al Russel house, Hill. 35. Eliz. 3. points fuer resolue per touts les Justices. ¶ 1. Que femme couert fuit deins lact de 1. Eliz. cap. 2. & forfeiter xij. ð. pur nient repayer al Eglise sur chescun Sonday et Holyday. ¶ 2. Que lact de 23. coment que ceo est pluis penall et inflict imprisonment pur ceste non fesance a cesty que nest able a paier, uncore que feme couert fuit deins ceste Statute de 23. 1. Pur ceo que ceste act referre al dit act de 1. Eliz. & sans question el fuit deins lact de 23. 2. Femes couert fuer vn grand part del Realme & mult daungerous, pur ceo que ils ount le education de lour children et le gouernance de lour seruants. ¶ 3. Que instant que le remedy del Roigne fuit per inditement, & l'feme couert fuit solement indite & le Baron ne fuit partie a ceo, il ne fuit subiect al forfeiture del femme de xx. li. per le moys, car le Baron ne serra vnques charge p̄ lact ou default sa femme, mes quant il est fait partie al action & Judgement done vers luy & sa femme, come pur le det la feme, ou pur scandall publie per feme, ou pur trespasse fait per luy &c. laction de det, sur le case, trespasse &c. serra port vers le Baron & feme, & le Baron pleadra &c. & serr̄ party al Judgement, mes si feme couert soit indite del trespasse, ryot, ou dascun auter tort, la le feme rñdra & serra partie al Judgement solement, & pur ceo le fine mise sur la feme in tiels cases ne serr̄ leuy sur le Baron, & pur ceo le informer fuit quant aux femes couerts in melior case que le Roigne, car intent que remedy fuit done a luy pur le dit forfeiture per action de dett, bill, plaint, ou information, le informer pur le dit forfeiture del feme couert poet auer action de det, bill, plaint, ou information vers le baron & feme

pur

p recouery de ẽ, & illint faire le baron party, mez illint ne poit le Roigne solement per voy de inditement, et pur ceo le preamble del act fuit voyer, That for the more speedie leuying and recouering for and by the Queenes Maiestie of all and singular the paines and forfeitures &c. by vertue of the Statute of the 23. yeare &c. Lact done remedy al Roigne per action de Det, Bill, Pleint, ou Information, illint que ou le Roigne pur le dit forfeiture des femes couerts duist, deuant cest act, targer tanque le mort del Baron a leuyer ou recouer ceo vers la feme, & si la femme vst deuie deuant son Baron, in mults cases le forfeiture fuit in danger dẽe perdue, ore cest acte in adding remedie pur le Roigne per action de Det, Bill, &c. ad done al Roigne present remedie a recouer ceo vers le Baron & feme, et a cest purpose fuer̃ les parols subsequent adde, cestascauoir, In such sort and in all respects as by the ordinary course of the Common Lawes any other debt, due by any such person in any other cause, shall or may be recouered, mes pur le det ou duty due per feme couert in action &c. port vers le Baron et feme, le Baron serra charge pur ceo: et sur ceo plusors Informations sur cest Statute pur le Roigne fuer̃ exhibite vers Barons & femes pur les forfeitures les femes sur lestatute de 23. in Banke le Roy &c. & ceo fuit le principall intention de cest branche de 35. Elizab. a faire les Barons des femmes couerts Recusants deste charge al suite le Roigne pur les dits forfeitures de lour femes: Illint que ore les Barons & femes poient ẽe charges in cest case cibien al suite del Roigne per action de Det, Bill, Plaint, &c. come al suite de Informer: mes si le Roy prist son remedy p action ỏ det. bil, plaint, ou informatiõ, donqs nul ꝓclamation poit ẽe fait sur ẽ, car ceo est solement sur inditement, & solement sur inditement deuant Justices Dassise ou generall Gaole deliuery, p lact de 28. & ore deuant Justices de Peace ꝑ inditemẽt auxi p lestatute de 3. Iac. Reg. c. 4. mes le Roy in case ou il ꝓceed p action de Det, bill, plaint, ou informatiõ, aũa execution accordant al common ley, come il aueroit sur le dit act de 23. Eliz. 3. Les parols del dit act de 35. Eliz. ne sont penne simpliciter, ꝙ. that all and singular the paines shalbe recouered to her Maiesties vse, car come ad ẽe dit, ceo ne fuit lentẽt des feasors, mes secundum quid & sub modo, cestascauoir, in such sort, and in all respects as by the ordinary course of the Common Lawes any other Det,

due by such person should or might bee recouered or leuied, per quel appiert que cest act alter le remedie solement al suite le Roigne, que lou deuaunt el proceed sur inditement solenque lestatute (in quel case le Baron del femme Recusant ne fuit charge) ore el proceed per action &c. come ascun auter det poit este recouer per le common ley, in quel case pur det la femme al common ley le Baron fuit charge. Et in auters Statutes queux ount semblable reference nul alteration est fait del Ley deuant, mes solement quant al point a que le reference est fait, come est tenus in 14. Hen. 7. 17. 18. in Euerard Digbyes Case, ou est pruuieu per lestatute de 1. Hen. 7. cap. 1. That the Demaundant may maintaine a Formedon in the discender or rem' against the Pernor of profits, and the same Pernors to vouche &c. as if they were ten' indeed, le case fuit, que Euerard Digby port Scire facias vers pernor de profits, et la est tenus, que le pernor ne voucher in Scire facias, car cest intend in tiel action in que il poit vouch, & les dits parols ne alter le ley de voucher in ascun auter point que in ceo a que le reference est fait, cestascauoir, que nient obstant que il nest ten̄ del terre, mes pnor des profits, que vncore il voucher̄, mes ne done a luy nouel voucher a auters respects, & pur ceo il ne vouchera in action port vers luy in que nul voucher gist deuant: Issint in le case al barre, lact de 35. Elizab. cest intend dextender a ceo solement a que ceo est referre, & ne altera ou abrogater̄ ascun ley deuant. Issint lestatute de W. 2. capit. 4. que done le Quod ei deforceat' &c. a cesty que ad perde per default, done auxi al dōant a voucher in ceo, mes nemy simplicitèr, mes secundum quid, cestascauoir, ac si esset tenens in priori breui si warrantum habuit, ceo extend solement al point a que il est referre, cestascauoir, nient obstant que il soit dōant, mes ceo ne alter̄, ou abrogater̄ le Ley in auters cases, & pur ceo si le ten̄ plead auter barre & ne maintaine le primer recouery, il ne voucher̄ omninò, auxi il ne voucher̄ auter que cesty in le reuersion; auxy il ne vouchera in ascun action in que nul voucher gist, Vide 9. Ed. 3. 22. 33. Ed. 3. tit. Counter plea de uoucher 101. 33. H. 6. 16. 14. H. 7. 18. 4. Cest act de 35. Eliz. est tout in laffirmatiue, & p̄ c̄ ne repealer̄ ou abrogater̄ p̄cedent affirmatiue ley deuant, & le dit rule que leges posteriores priores contrarias abrogant, fuit bien agree, mes quant a cest purpose Contrarium est multiplex. 1. In qualitie, s. si lun soit expresse

expresse et materiall negative, et le darreine est expresse et materiall affirmative, ou si le prim̃ soit affirmative & le darreine negative. 2. In matter, coment que ambideux sont affirmatiue, come per lestatute de 33. Henr. 8. capit. 23. est enact, que si aſcun person esteant examine deuaunt le Councell le Roy ou 3. de eux, confesse aſcun Treason, misprision, ou murdre, ou soit a eux vehement suspect, il ser̃ trie in aſcun Countie ou le Roy pleiſt per son Commission, &c. et puis auter ley fuit fait 1. & 2. Phil. & Mar. cap. 10. in ceux parols, That all trialls hereafter to be had for any treaſon ſhalbe had according to the courſe of the common Law, and not otherwiſe. Cest darreine act (coment que les darreine parols nus sont ẽe) ad abrogate le primer, pur ceo que ils fuer̃ contrarie in matter: Mes ceo ne abrogate lestatute de 35. Hen. 8. cap. 2. de triall des treasons ouster le mere, nient obstant les parols negative, pur ceo que ne fuit contrary in matter, car ceo ne fuit triable per le common ley, Vide Dier 3. Mariæ 132. acc'. Vide Stanford 89. 90. Issint lestatute de 1. E. 6. de Chaſteries, esteant in affirmative, ad abrogate lestatute de W. 2. cap 41. que done l' Cesſauit de Cantaria auxi in laffirmative, car lun est contrary al auter in matter. 3. contrarietie in reſpect de prescript forme, come in Amy Townesends caſe in Pl. Com. & pluſors auters contrarieties y sont que ne sont necessary dẽe recite: solement est aſcauoir, que intant que acts de Parliament sont establie oue tiel grauity, sapience, & vniuerſall consent de tout le Realme, pur le aduancement del weale publique, ils ne doient per aſcun strained conſtruction hors de generall & ambiguous parols dun ſubſequent act, estre abrogate; Sed huiuſmodi ſtatuta tantâ ſolennitate & prudentiâ edita (come Forteſcue parle fol. 21. cap. 18.) doient ẽe maintaine & ſupport oue vn benigne & fauourable interpretation; car Forteſcue la dit, quod Angliæ Statuta non Principis voluntate, ſed totius Regni aſſenſu conduntur, quo populi læſuram illa efficere nequeunt, vel non eorum commodum procurare, prudentiâ enim & ſapientiâ ipſa eſſe referta putandum eſt, dum nõ vnius, aut centum ſolum conſultorũ virorũ prudentiâ, ſed pluſquam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, edita ſunt: Et oue ceo accorde le caſe in 4. Edw. 4. 3. 4. & 12. et le caſe de Cheſter milles in le 10. part de mes Reports fol. 137. 138. 6. Ed. 6 72. Dyer pl'. 3. Et ou lestatute de 16. Rich. 2. cap. 5. enact que

touts les terres et tenements dun attaint in Premunire serõ forfeit al Roy, le case in Pasch. 21. Eli. fuit que vn Trudgin esteant tenant in taile de certaine terres & tenemts fuit attaint in vn Premunire, et le question deuant touts les Judges Denglitre fuit, si lestate taile fuit barre ou nemy, et fuit resolue per touts les Justices, que ceux generall parols nad repeale le Statute de donis Conditionalibus, mes que il forfeitera soleñt pur son vie, et le issue in taile inheritera. Et pur mesme le reason fuit resolue in cest Case. ¶ Primerment, que cest Statute de 23. Eliz. que ad inflict le penalty de xx. l. per le moys, nad tolle lestatute de 1. Eliz. que ad done le forfeiture de xij. d. pur chescun Sonday et Holyday, mes que ambideux serra pay, car lun poit bien estoier oue lauter, car le forfeiture de xij. d. est forfeit cytost come le Sonday ou Holy day passe, mes le xx. l. nest forfeit forsque anque al fine de moys, issint que le xij. d. est forfeit per voy de preuention; Auxi le forfeiture de xij. d. est done solement al poures, et le xx. l. al Roigne &c. Et le neglect de diuine Seruice in le Sabaoth & Holy daies, est digne de greinder punishment. Et que lestatute 23. Elizab. nad tolle Lestatute de. 1. quaunt al dit forfeiture de xij. d. appiert p lestatute d 3. Iacobi Regis cap. 4. car per mesme lact pluis speedy remedy est done pur le dit forfeit pur le Saboath. ¶ 2. Le dit braunch del act de 28. Elizab. cestasçauoir, que chescun conuiction hereafter shall be in the Court commonly called the Kings Bench, or before the Justices of Assise &c. and not elsewhere, ne abrogate tout le power des Justices de Peace, et des auters Justices a queux authority fuit done per 23. car vncore alcun de eux poient prender inditement, & ceo per benigne interpretation a abrogater cy petit come poet ẽe, intant que le dit act de 28. restraine solement conuiction, issint que le power a prender lenditement remaine: & issint fuit tenus per touts les Justices & Barons del Eschequer in Ed. Plowdens case Auxi in mesme le case fuit tenus per eux, que ou le dit Ed. fuit indite deuant Justices de Peace, & proclaime deuant les Justices dassise, ceo fuit (quant al proclamation) enconter lexpres lre del act, mes tiel enditement couient dauer ẽe remoue in cest Court de banke le Roy, & sur ceo proces destre fait &c. ¶ 3. Que lestatute de 7. Iacobi cap. 6. prouide, que si feme coũ soit conuict, que il serra commit al prison tanque &c. que cest affirmatiue

matiue ley ne tolle l' remedy que fuit done al Roy p̄ le forfeiture de feme couert per lestatute de 35. Eliz. ou al Juſtices p lestatut ō 23. Eliz. p̄ c̄ q̄ toutz iez dits acts ſōt affirmatiue, mes el ne ſerē puny forſqz ſur vn de eux. Auri le negatiue clause in lact de 3. Iacobi, cestaſcauoir, that no perſon ſhall bee charged for his wiues offence &c. nextend al feme couert dēe charge ou ſur lestatute de 35. al ſuite le Roigne, ou ſur le act de 23. al ſuite lenforcer, car les polz ſont expreſſemēt penne, That no perſon ſhall be charged for his wiues offence by force of this act, s. del act de 3. Iacobi.

Et ou fuit obiect, que l' expreſſe deſignation del vn perſon eſt le excluſion de touts auters, voier eſt in touts acts q̄ux ſont introductiue dun nouel ley, come les dits act de 31. E. 3. & 8. H. 6. mes icy ſont 2. acts de Parliament, & lact de 35. ne done ceo a vn nouel perſon, mes a meſm̄ le perſon que 23. ad ceo done, ceſtaſcauoir, le Roigne, et neſt forſqz act de additiō a doner pluis ſpeedy remedy q̄ fuit done per lact de 23. Come in bē de meſne le prez al common ley fuit diſtres infinit. & cōm̄ q̄ lestatute ō W. 2. cap. 9. done pluis ſpeedy prez & in le fine foriudger, vncore le pl' poit p̄nder q̄l prez il voet, ou al commō ley, ou ſur le dit Statute, quia ambideux ſont in laffirmatiue, & oue c̄ accord F.N.B. 137. & 14. H. 7. 10. Vide 36. H. 6. 3. 3. E. 4. 27. 48. E. 3. 14. 15. H. 7. 16. Stradlings caſe Pl'. Com. 207. Dyer 17. Eliz. 243. 46. E. 3. 4. 21. Ed. 3. 11. 30. E. 3. 11 20. H. 6. 11. 29. Aſſ. pl. 35. 29. Ed. 3. 24. 8. E. 3. 52. 22. R. 2. tit. Damages 130.

Et fuit obſerue, que in mults caſes le deſignation de vn nouel perſon in vn darreine act de Parliament ne excludeē vn auter perſon que fuit authoriſe a faire meſme le choſe p vn act precedent. Eſt puruieu per lestatute de 8. H. 6. cap. 16 que aprez office troue &c. cesty que ſoy ſenty greue poit deinz le mois oſter trauers et a prender les terres & tenements a ferme, & que donq̄s le Chauncelor, Treaſorer, & auk̄ Officer demiſeē a luy a ferme donec &c. Vide 13. E. 4. fol. 8. Et ore per lestatute de 1. H. 8. cap. 16. il ad liberty p le ſpace de 3. moys, & puis lestatut de 32. H. 8. cap. 40. done authority al Maiſter de gards, oue laduiſe del vn del Councell, a faire leaſe de terres de gard, ou dun Ideot, durant le temps que ils remaineē in les maines le Roy, coment q̄ le darreine act deſigne auter perſon, vncore ceo ne tolle le prīer tout ouſterment, car ſi deuant aſcun leaſe fait p le Maiſter del gards,

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le Chauncelor & Treasorer sont lun solonque lastatute de 8.H.6. donqs le dit Maister ne poet ceo demiser, & isslint si le Maister fait ceo pruñ al auter, le Chancellor & Treasorer &c. ne poent demiser ceo al partie greue, come Stanford tient Prer.fol.69.a.& b. ou il mention le dit rule, que leges posteriores priores contrarias abrogant. 43.Ass.pl'9. lestatute de 13.E.3. de Mercatoribus, que done assise al teñ per Statute Merchant, ne tollera l'assise que le teñ del frankteneñt ad deuant, mes ambideux bien estoient ensemble. Isslint in 33. H.8.fol 50. Dier, si fuit enact que le puisne fitz auera appeale de mort son pier, ceo ne exclude le fitz eigne de son suit, pur ceo que ne sont alcun parols de restraint. Quant al auk obiection, que le generalitie des parols, All and euery &c. implyont vn negatiue, pur ceo que qui omne dicit nihil excludit. A ceo fuit respond & resolue, primerment, que les dits parols ne sont simpliciter generall mes secundum quid, come ad ẽe dit, que est pleine rñs a cest obiection. 2. que en le principall case in Dyer 33.H.8.fol.50. q̃ demise fait desouth le grand seale des terres deins le surucy del Court de Augmentation, per lauthoritie de mesme le liure, nest pas void. Vide Porters case in le primer part de mes Reports fol.25.& Gregories case in le 6.part de mes Reports fol.19.b. Et lestatute de 23.H.8 cap.3. purueu generalment, That all attaints hereafter to bee taken, shalbe taken in the Kings Bench, or Common place (mes les felons del act ne stayont la, mes adde ceux parols) and in none other Court. Vide Dyer 202.b. Isslint fuit enact per lestatute de 6.E.6. q̃ les quarter Sessions en les Counties de Anglesey &c. serra touts foits tenus a Beaumares solement, & non alibi infra Com' Anglesey &c. et Sessions fuer̃ tenus al Newburgh in mesme l'County, & diuers persons la indite &c. Et 4.& 5.Phil.& Mar. fuit resolue per touts les Justices Dengliterre, que tout fuit Coram non Iudice et voide, per reason del dit negatiue prohibition: per quel appiert que les generall & affirmatiue parols ne fuit le cause del resolution.

Et le Chiefe Justice dit, que coment que soient negatiue parols in vn act de Parliament, vncore in mults cases ẽ ne liera le Court del Banke le Roy, p̃ ceo que les pleas la sont Coram ipso Rege; & sur ceo il mit le case in 21.E.3.fol.55.b. & 21.Ass.pl.12. Labbot de Westñ case, que ou est purueu per lestatute de W.1.cap.3. que nul rien desormes soit demand,

mand, ne prise ne leuy p Viscount, ne per auter, pur escape de Laron ou felon, ielqz a taunt q̄ lescape soit adiudge deuant Justices errants, le case fuit, que fuit prelent in banke le Roy que Labbot de Westm̄ ad suffer certaine Clerkes attaint deuant le Roy q̄r fuer̄ in le prison del dit Abbot deliuer a luy hors del Marshalsey, descaper, & la Pole que fuit accouncell oue Labbot moue le Court, que per force del dit Statute tanqz in Eire Labbot ne deuoit ẽe impeach, per que il doit este myse a rñder & non alocatur, per que Pole dit, ne escapa pas prist. Istint quaunt vn Statute create vn nouel ley, et assigne certaine Justices dexecuter ceo, coment que les Justices de le banke le Roy ne sont per expresse parols authorise per iact, vncore ilz poient dexecuter ceo, come le dit Statute de 8.H.6.cap.9. done power aux Justices de Peace a faire restitution, & p̄ ceo Justice d̄ Oyer & Terminer, ou Gaole deliuery &c. ne fer̄ restitution, & isstint fuit resolue come ad este dit; vncore si lenditement soit remoue in banke le Roy Coram Rege, ils agard̄ont restitution, & isstint sur argument fuit resolue in banke le Roy in 4.H.7.fol.18.b. & sur ceo vriefe de Restitution fuit agard, & oue ceo accord 15.H.7.5.b. Vide 7.E.4.18. Et le chiefe Justice cite vn resolution des Justices Mich. 37. & 38. Elizab. in ceste case in le generall pardon de Anno 35. Eliz. la est exception de touts penalties & forfeitures conuert a vn debt per Judgement, Order, Decree, ou Agreement; ore le question moue a les Justices fuit, si vn Recusant conuict sur Proclamation fait solonqz lestatute de 28. Eliz. ser̄ deins ceste except, & fuit resolue que non, car lez parols del statute sont, shalbe conuicted as if hee had bene found guiltie per verdict, & ne parle dascun Judgement, auxi coment que le Parliament sur tiel conuiction ordeine (q̄ est in nature d̄ Judgem̄t) que il paiera le forfeiture &c. vncore ceo nest tiel Judgem̄t q̄ est intend deins le dit generall pdon: Mes fuit resolue que sil vst ẽe conuict & Judgem̄t done sur ceo solonque lestatute de 23. q̄ tiel Judgem̄t est deins le dit exception. Et fuit bien obserue, q̄ lestatute de 1. Iacobi Regis cap.4. enact, That all statutes made against Recusants in the reigne of Queene Eliz. shalbe put in due and exact execution.

¶ Quant al darreine obiection fuit resolue, que nul tiel double charge poit a luy accruer, mes que il poit pleader que il fuit auter foits conuict &c. & isstint per plea auoidra le

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double charge. Et ou p lestatute de 3. Iac. cap. 4. est purueu, que nul Inditement &c. nor any Proclamation, Outlawry, or other proceeding thereupon, shall be auoided by reason of any default of forme, or lacke of forme, or other defect whatsoeuer (other then by direct Trauers to the poynt of not comming to Church, or not receiuing the Sacrament, whereof such person shalbe indicted) but that the same Indictment shall stand in force, any such default in forme or other defect whatsoeuer notwithstãding, le Recusant poit bien plead ascun collateral barr̃ come pardon, submission, auter foits conuict, ou auter barre dehors, car cest act extend solemẽt al defects deins lenditemẽt ou auter proceedings.

Et q̃ lenformer ne poit charge ascũ que est conuict deuant al suit le Roigne sur lestatute de 23. Eliz. 35. Eliz. ou 3. Iac. Regis. Mes ceux queux sont conceale et nient charge al suit le Roigne, lenformer poit exhibite informations vers eux sur lestatute de 23. Eliz. in Banke le Roy, ou deuant Justices de Assise, ou generall Gaole deliuery, et illint charge eux q̃ peraduenture auterment ne serr̃ vnques charge, car p lestatute de 23. Eliz. il couient ẽe charge deins lan et le iour, illint pur ascun forfeiture deuant lan & le iour nul remedy poit ẽe prise, ne pur le Roy, ne pur lenformer, p̃ ceo que le temps est limit in certaine per le dit acte de 23. Elizab. &c. et pur ceo fuit dit, que in cest case lenformer neque fuit falcator neque messor, mes spicelegus, cestascauoir, vn gleaner: Et que ceux Recusants, feme coverts, ou auters, que nont ẽe conuict al suite le Roy, que lenformer poit eux trouer & charger, ou auterment ilz poient escaper oue impunitie: et in le principall case pur vn graund part del temps si lenformer nad exhibite son information, le Roy perdr̃ tout p̃ tant de temps que fuit deuant lan, ou in cest case il auera ij. parts dont lun serr̃ al opes des poures, & puis Judgement fuit done vers le defendant.

Nota lecteur Tr' 31. Eliz. in cest Court inter Stretton qui tam &c. & Tayler fuit adiudge, q̃ apres vn populer action commence, coment q̃ lattorny le Roy voille ent̃ vlterius non vult prosequi, ou si le defendant plead vn speciall plea, coment le vse est q̃ lattorny generall reply solemt̃, vncore sil ne voille replier ou prosecutor pur le Roy, le informer poit ,pseutor pur son part, car per le suite del informer commence il ad fait action popular son priuate action, quel le Roy ne nul

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auter poit releale quant a son interest, & le condemnation ou acquitall del pty a son suit, est barre a touts gents & encont le Roy: & vncore le Roy in touts ceux cases deuant ascũ action commence p vn informer poet ẽ pdon & releale, & ceo ꝑ barre encounter touts gents: & cest diuersity fuit graunt, et denie p nulluy. 1. Hen. 7. 3. & oue ẽ accord 37. Hen. 6. 4. a. 5. E. 4. 3. 2. Rich. 3. 12. Auxi Mich. 39. & 40. Eliz. fuit adiudge in cest Court, que si pendant lenformation lenformer qui tam &c. morust, que vncore lattorny le Roy poet prosecuter le suit p le Roy, car lenformation per le pty seruera pur le Roy, apres son mort.

Paschæ

Paſchæ 13. Iacobi Regis.

Le caſe del Maſter & Fellowes de Magdalen Colledge in Cambridge.

IOhn Warren port Iectione firmæ vers John Smith Maiſter in arts, q̄ commence in banke le Roy Paſch. 9. Iac. Regis Ror. 288. ꝙ count dū demiſe fait p̄ Francis Caſtillion Chiere 20. Decemb. an. 8. Iac. dun meſe in London in parochia Sancti Botolphi extra Algate in Warda de Algate, del feaſt de Saint Michael Larchangel donques darreine paſſe pur deux ans, per force de que le plaintife ent̄, et fuit poſſeſſe tanqz eiect p̄ le defendant. Le def. plead rien culp. et les Iurors donont vn eſpeciall verdict, ceſtaſcauoir, que longe temps deuant le treſpaſſe ꝙ eiectment Rogerus Kelke ſacræ Theologiæ profeſſor Magiſter, & Socij Collegij Sanct' Mariæ Magdilenæ in alma Academia Cantebrigiæ, ſeiſiti fuer' de infraſcripto meſuagio cum pertin' in dominico ſuo vt de feodo in iure Collegij ſui præd', ꝙ iſſint eſteant ent̄ ſeiſie, 13. Decem. ann. nuper Reginæ Eliz. 17. per lour Indenture in Angloys, inter le dit Roigne Eliz. dun part, ꝙ les dits Maiſter ꝙ Fellowes del dit Colledge dauter part, ꝙ enrolle in le Chancery de record, les dits Maiſter ꝙ Fellowes, For diuers conſiderations them thereunto ſpecially mouing, did giue and graunt vnto our Soueraigne Lady the Queene, All that their meſuage (que fuit le meſuage in le count mention) with the appurtenances lying in in the pariſh of Saint Botolphs without Algate London, To haue

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and to hold the ſaid meſuage, with the appurtenances, to our ſaid Soueraigne Lady the Queene, her heires and ſucceſſors, for euer: Yeelding and paying therefore yerely to the ſaid Maſter and fellowes, & their ſucceſſors, at the Feaſt of S. Michael the Archangel

15.li. oue clauſe de Diſtres, & deſouth ceſt conditiõ ou puiſo enſuant, viz. Prouided neuertheleſſe, That if our ſaid Soueraigne Lady the Queene, her heires and ſucceſſors, ſhall not ſufficiently conuey and aſſure by Letters patẽts vnder the great ſeale of England, the ſaid Meſuage, with the appurtenãces, vnto one Benedict Spinola, Merchant of Genoa, and his heirs, before the firſt day of Aprill next enſuing, that then this preſent Indenture, and euery gift, grant, and article therein contained ſhall ceaſe and be vtterly voide and of none effect, ſicome p le dit Indenture, dont lñ pt fuit enſeale oue le ſeale des dits Maſter & Fellows, & lauter oue le grand Seale Dengleterre appiert: et ouſter les Jurors trouont lact de 13. El. ca. 10. per que eſt enact p authority del Parliament, que de ceo in auant touts Leaſes, Dones, Grants, Feoffements, Conueyances, ou States, dẽe fait, had, or ſuffered p aſcun Maſter & Fellowes daſcun Colledge, Deane & Chapter daſc̃ Cathedral ou Collegiate Eſgliſe, Maſter ou Gardian daſcũ Hoſpitall, Parſon, Vicar, ou aſcun auter ayant aſcun Spiritual ou Eccleſiaſtical Liuing, ou aſc̃ Meſes, Terres, Diſmes, Teneñts, ou auters Hereditañts, eſteant pcel daſcũ tiel Colledge, Eſgliſe Cathedral, Hoſpital, Rectory, Vicarage, ou aſc̃ auk ſpiritual liuing &c. al aſc̃ pſon ou pſõs, corps politiq ou corporate other then pur terme de 21. ans ou 3. vies, ſ̃t tout ouſterñt voide & de nul effect a touts intents, cõſtructions, & ppoſes &c. & ouſter ilz trouõt lact de cõfirmac̃ des patẽts ſi fait an. 18. El. cap. 2. p q̃ eſt recite q̃ lou puis le 18. iour de Nouẽb. in lan prim̃ier del raigne del dit roigne Eli. diũs & ſeũal Honors, caſtles, ff̃s, teneñts, rẽts, reũliõs, ſ̃uices, & auks hereditañts, fuer cõuey & aſſure al dit iades roign ſes hz & ſucceſſ, p diũs & ſeũal pſõs & corps politiq, cybñ p le exoñac̃ & ſatiſfac̃ de grãd debts & ſũmes dargẽt, cõe p auks bone cõſiderations p le pfect aſſurance, confirmac̃, & ouſter ſurety de q̃ux fuit enact p authority de parliañt q̃ touts feoffements, fines, ſ̃renders, aſſurances, cõueiãces, & states in aſc manñ cõueyed, had, ou fait, ou dẽe fait a aſc̃ tẽps deins 7. ans puiſ l' fine del ſeſſiõ del m̃e parliañt, to or for our ſoueraign lady the Q. Maieſty, by or from any perſon or perſons, bodies politique or corporate, of any honors, caſtles, manors, lands, tenemẽts, &c.

for any debt, ſumme or ſummes of money, or other conſideratiõ whatſoeuer, ſhall ſtand, remaine, and bee good and auaileable in law, to all intents, conſtructions, and purpoſes, according to the true meaning, intent, and purport of the ſame, Sauing to all and euery perſon and perſons &c. Et ouster fuit enact, que touts Letters patents, Indẽtures, & auters escripts, enseale oue le graund Seale Dengliterre, ou le Seale del Duchie de Lancaster, ou Seale del County Palantine de Lancaster, adonques faits & grant per le dit Roigne pur aſcun ſumme dargent, ou pur aſcun auter conſideration, eſſent bona, perfecta, & effectuel in ley &c. enũs le dit roigne, ſes heirs & ſucceſſors ſolongz le tenor & effect de ñ lez Letters patẽts &c. Et trouont ouster, q̃ le dit roigne Eliz. 29. Ian. in le dit 17. an de ſon raigne, per ſes Letters patents deſouth le graund Seale, graunta al dit Benedict Spinola (que adonqs fuit vn franke home denizated) le dit meſuage oue les appten̄ances, a auer & tener a luy & ſes heirs & aſſignes a touts iourz, le quel Benedict Spinola 15. Iunij anno 22. Eliz. per ſon fait indent & deins 6. moys in le Court de Chancery inrolle, pur argent bargaine & vende le dit meſuage oue les appurten̄ances al Edw. Coũtee de Oxon̄ et a ſes hẽes, per force de que le dit Countee enter, et fuit ent ſeiſi in ſon demeſne cõe d fee prout lex poſtulat, et il iſſint eſteãt ent ſeiſi, Rowlãd Broughton geñ et Eliz. ſa fẽe craſtin' Trin. anno 24. Eliz. leuie fine del dit meſe oue les appurtenances al dit Countee de Oxford & ſes heirs oue pclamations, queux fueront troue a large ſolongz leſtatute, & puis 9. Maij anno 25. Eliz. le dit Countee de Oxford demiſe le dit meſe al Edward Hamon pur 51. ans, que 9. Nouemb. anno 26. El. aſſigne tout ſon intereſt et terme pur ans in le dit meſe a vn M. Waſham, q̃ 4. Octob. anno 2. Iac. morust ent poſſeſſe inteſtate, aps q̃ mort Alice ſa fẽe pſt adminiſtration de ſes bũs &c. et 1. Febr. anno 4. Regis nunc pſit a baron le dit Francis Caſtilion Chiualier: Et q̃ le dit Roger Kelke Maſter del dit Colledge 8. Ianuarij an. Domini 1620. (q̃ fuit an' 44. regni Reginæ Eliz.) morust, & puis s̃ mort Barnabee Gooche Doctor de Ciuil ley fuit Maſter del dit Colledge elect et pfect, et que le dit Edw. Hamon in le noñ et ſtead del dit Countee adonqs teñ del dit meſe pay al dit Barnabee Gooche adõques Maſter del dit Colledge 15. l. del rent auant dit al dit Maſter et Fellows del dit colledge due al Feaſt de S. Michael anno Domini 1606. queux 15. l. le dit Barnabee Gooche adonqz Maſter receiue, & y eſcript

deſouth

desouth son maine sans seale comũ q̃ il ad receiue ceo: Et que le dit Barnabee Gooche deins 5. ans puis que il fuit Master elect & perfect et puis le receit del dit rent, s. 5. Februar' anno 4. Regis nunc, in le dit mese oue lappurtenances fuit le possession del dit Francis Castilion & Alice sa feme enera in jure Collegij sui prædict. et les dit Master & Fellowes del dit Colledge, s. 5. Februar' anno 4. Regis nunc p lour Indenture desouth lour common Seale demisont le dit mease oue lappurtenances al dit John Smyth ore def. pur 6. ans, et le dit Francis Castilion chiualier sur le possession del dit John Smyth reenter & fist le leas al dit John ouerr̃ prout in le count, q̃ fuit eiect p le dit J. Smyth prout in l' cõsit: Et le q̃stion q̃ les Jurors referre al Court fuit, le quel sur tout le matter le entrie del dit John Smyth fuit loial ou nemy &c.

Et ceste case fuit argue al barre p Hobart adonqs attorney general, Mountague Serieant le roy, George Croke, del pt del plaintife, & p Yeluerton Solicitor le Roy, Thomas Crewe, del part del defendant.

Et in ceste case 4. points fueront moue & argue al barre: 1, 4. Points.

1. Si le dit conueyance fait al Roigne Eliz. per le Master & Fellowes del dit Colledge, del dit mese parcel des possessions del dit Colledge, puis le dit act de 13. Eliz. Reginæ, fuit restraine per m̃ lact.

2. Admittant q̃ le dit conueyance fuit restraine p le dit act de 13. si le dit act de 18. El. ad supply le defect ď c̃, & ad fait ceo perfect & effectual.

3. Admittant auxy, q̃ lact de 18. El. ne extẽd ne done aũt forze a ceo, si le dit fine leuy, & 5. ans passe liera le droit del Master & Fellowes del dit Colledge a touts iours.

4. Si le dit acceptance del rent auãt dit p le dit Master del dit Colledge disablet ou concludet luy de enter in le dit mese. Et si alcuns des dits points ferr̃ adiudge ẽs le defendant donqs lentrie de luy nẽ loyal, & p consequẽce iudgement ferr̃ done p le pl̃, bonũ defendentis ex integra causa, malum ex quolibet defectu.

Quant al prim fuit obiect, si p le rule del ley, le roy nient esteant nosme in lact est p le ley exempt hors del act, car le ley done al roy cẽ progatiue, si p le dignity de son royal person il nest p construction del ley include deins ceux common parole, person ou persons, corps politique ou corporate: et soit le statute affirmative, ou soit ceo negatine que est pluis forz

ceo ne liera le Roy si non q̄ il soit especialm̄t nosme, mes il prendra benefit dun statute coment q̄ il ne soit nosme, come lestatute de W.1.cap.35. que mist reasonable aide (cybien a faire leigne fits Chiualier come a leigne fille marier) in ētain purueu q̄ desormes de fee de Chiualier entier solemēt soit done 20.s. et de 20.l. terre tenus per socage 20.s. et de pluz pluis et de meynes meynes, mes fuit tenus, que intant que le roy ne fuit nosme, il ne fuit lye per cest ley, & amitter ceo in certainty fuit lact de 25.E.3.ca.10. fait in quel act le roy fuit especialment nosme. Vide Fit.Nat.Bre.82.f.acc'. Auxy lestatutes de Limitations, s. de Merton cap.8.W.1.cap.3. & 32. H.8.cap.2. ne vnqs ont lye le Roy. Jsslnt lestatute de W.2. cap.5. que done le plea de plenarty per 6. moys ne lya le roy, pur ceo que lact est generall, et ne nosme le roy. Lestatute de 27.E.1. que done triall in pais per Nisi prius, ne lieē le Roy, Fitz.Nat.Br.241.b.24.E.3.23.&c. Jsslnt p lestatute de 18.E.1. de Quia emptores terrarum, le Roy nest lye, come est tenus in 10.H.7.23.&c. Lestatute de Magna Charta, ca.11. purueu in le negatiue, qd cōmunia placita non non sequantur curiā nostrā, sed teneantur in aliquo loco certo, mes ē ne lie le Roy, come est adiudge in 23.H.3.tit.Br'e, & 31.E.1.tit. Prerogatiue 28. car il poet auer Quare impedit in Banke le Roy: et plusors auterz cases fueront cite sur cest large & cōmon ground, q̄x poies trouer in nostre liures, & principalm̄t in Pl.Com.fo.240. in le Seignior Barkeleys case. Vide 11.H.4.tit. Quare impedit 120.11. H.4.87. Prerogatiue, B.57. 12.H.7.21. in Stoners case, 4.E.3.34 30.E.3.5. 7.H.4.32. 4.Mar.Dyer 145. Jsslnt in le case al barr̄, intant q̄ le roign ne fuit nosme in le dit act de 13.El. el ne fuit lye p ē, mes fuit a liberty a prend le dit grant, come el fuit deuant le dit act de 13.El.

Fuit auxy vze, que touts temps puis lact de 13.Elizab. diuers Masters et Fellowes des Colledges, Deanes et Chapters, Masters ou Gardians dez Hospitals, et auterz ayant Spiritual ou Ecclesiastical liuings ont faits mults estates & leases al Roigne Eliz. et al Roy que oze est, queux sont grant ouster et transferre aux mults plons, et touts ceux fueront faits per aduise des homes bien apprises in la ley, et del counsel erudite del dit iades Roigne et del Roy auxy, et le change de tiel common et constant opinion ꝑ q̄ les estates et interests des tants des homes depende, fert cause de graund veration, suites in ley, et le vndoing de plusors, queux non solement ount expend lour substance

ou

ou le pluis pt de ceo ſ tiels eſtates & leaſes, mes auxy ount expẽd mult ſur nouel edifyings & auꝰ charges ſ eux, toutz q̃ux ſerõ ouſterñt depdue p le change del dit cõtinual pract-iſe. Et in tiels changes, Rerũ progreſſus oſtendunt multa quæ initio præcaueri aut præuideri non poſſunt: & auꝰ dit, qd in ædificijs lapis male poſitus non eſt remouẽdus: et le ley dit, Intereſt Reipublicæ vt ſit finis litium.

Quant al 2. point fuit argue per le Counſel del plaintife, que admittant q̃ le Roigne fuit lye per le dit act de 13. Eliza. vncoꝛe le dit act de 18. Eliz. ad fait le grant al Roigne bone et effectual, car admit q̃ le dit grant al Roigne fuit voidable in apꝛes, ou maintenant voide ou de nul effect, vncoꝛe le act ad fait ceo vnauoidable, bone, & effectual: car leꝛ parols ſõt, pur le perfect aſſurance, confirmation, & ouſter ſecurity ỽ tiels aſſurances, conueyances, & ſtates, &c. eſt enact, que ils eſtoyẽ remaineñ et ſerõ bone & auaileable in ley, a touts intents, conſtructions, et purpoſes, according to the true meaning, intent, and purport of the ſame. Iſſint que appiert p les parols del act, q̃ le pleine intent des feſoꝛs de ceo fuit a faire ceo pfect q̃ fuit imperfect, a faire ceo aſſured q̃ ne fuit ſure, & a adder greinder vigoꝛ a ẽ (per addition de ouſter ſecurity) que fuit defectiue deuant: et a ceſt purpoſe les feaſoꝛs del act, non ſoleñt in les dits pꝛecedent parols, mes in ceux q̃ ſont ſubſequent, ſont mult ꝓuident, & in manner curious, a toller tout euaſion q̃ poet ẽe fait hoꝛs de ceo, et pur ceo pꝛimerñt eſt enact, q̃ ils eſtoyeñ, remaineñ, & ſerõ bone & auaileable in ley: & a reſponder a vn ſecret obiection q̃ poet ẽe fait ſur les parols del act, ſ. touts feoffements, fines, aſſurances, conueyances, ſtates, &c. que ilꝛ couient ẽe ſufficient, car choſe inſufficient eſt repute in ley pur nul choſe, a ouſter ceo ceux parols ſont adde, a touts intents, conſtructiõs, et purpoſes, according to the true meaning, intent, and purport de ceo, iſſint que lact ne dit que ilꝛ ſerõ bone & auaileable, accoꝛdãt al ſtrict conſtruction & operation del ley (car ſilꝛ fuerõt bone et auaileable in ley, donq̃s ne beſoigne aſcun act a faire eux perfect ou ſure, ou a adder ouſter ſecurity) mes les parols ſont, according to the true meaning, intent, and purport de eux; et ſans queſtion, in le caſe al barre le true meaning and intent del Maſter & Fellowes et del Roigne Elizabeth auxy, et le purpoꝛt del dit Indenture fuyt a conueyer le dit Meſe al Roigne ſes heires & ſucceſſoꝛs, car tant le dit Indenture purpoꝛt, coment que ne ſoit de foꝛce a conueyer ceo.

Et fuit dit, si vn Euesq̃ ad fait estate ou leas al roign̄ Eliz. & puis lact de 18. Eliz. fuit fait, q̃ ceo ad fait bone lestate ou lease al Roigne coment que ne vnques fuit confirme per le Deane & Chapter. Jlsint si infant vst leuie fine al roigne, ou al auters p̃ le behoofe del Roigne, q̃ aps lact de 18. El. lẽfant ne vnq̃s reuerser̃ le dit fine pur nonage. Et mults aut̃s cases hors de lour inuention demesne fuer̃ mise, q̃x ieo de p̃pose ay omit.

Quant al 3. point, ils arguont, que les dits Master et Fellowes del dit Colledge fueront Corporation aggregat de pulsors, et ont lentier fee en eux, et per lestatute de 4. H. 7. serr̃ lye p fine et non claime per 5. ans, come est adiudge in Croft & Howels case, Pl. Com. 538. & in Stowels case, Plo. Com. 376. Vide 7. Ed. 6. 83. Dyer, Vide 24. Ed. 3. 58. et que lestatute de 13. El. ne aide eux in cest case, pur ceo que ceo extend solemt al Leases, Dones, Graunts, ou auters assurances ou conueiances fait ou suffered, & nient obstant cest pol (suffered) vncore couiẽt ẽe assurance ou conueiaunce suffered a q̃l ils serr̃ party, come p common recouerie des terres eve vers eux, ou recouerie dun Annuity per consent vers eux, come appiert in Eytrenes case, 14. Eliz. in le 5. part de mes Reports. fol. 14. b. Mes cest case del fine leuie inter estrangers et non claime p 5. ans, ne vnques fuit trahe in question ou doubt, et serr̃ grand weakening del generall assurance de Realm, si cest act serr̃ cõstrue enconr̃ le letter a exempter touts ceux nosmes in lact, jlsint q̃ ils ne serr̃ lye per ascun fine et non claime.

Quant al 4. point, jntant que le Master q̃ est le teste del Corporation ad accept le rent, et ad fait ent acquitance desouth son mayne, il ad conclude luy mesme de enter durãt le temps q̃ il est Master, et intant que il est conclude, les Fellowes sans lour teste ne poient enter, & sur c̃ ils concludõt, que pur touts ceux 4. points, ou pur ascũ de eux, car si alcun vn de eux serr̃ adiudge pur le plaintife, judgement doiet ẽe done vers le defendant. Encõter que fuit argue p le cosisell del defendant, & ils concludont q̃ iugemt serr̃ done pur le defendant.

¶ Et quant al prmer (q̃ fuit le principal point del case) fuit argue del part del defendant, & vnement resolue per les Justices *Coke* chief Justice, Sir *John Croke*, Sir *John Doddridge*, & Sir *Robert Houghton* Justices, sur solemne argument in Court, q̃ le dit act de 13. Eliz. extend a restrainer le Maister

ster et Fellowes del dit Colledge a comeier le dit mese (ceel des possessions de mesme le Colledge) al roigne, coment que le roigne ne fuit expressement nosme in le dit act. Et prim-ment fuit resolue, q̄ le general letter del act extend al roigne, car les parols sont to any person or persons, bodie politique or corporate, & sans question le roigne fuit vn person, come dicitur 10.H.7.18. Rex est persona mixta, et que el fuit corps politique appiert in Pl.Com. in le case de Duchie de Lancaster, fol. 213. & in le Seignior Barkleys case, fol.234. & in mults auters liures. Donques si lact soit general, & le Roigne soit clerement include deins le lett, si el serr̄ exempt hors del act, ceo couient ẽe per construction del ley, & come cest case le ley ne ferr̄ tiel construction pur reasons apparant in le dit act m̄: s.1. le roigne, Seignios spiritual & temporal, & les Commons, q̄x fesoyent le dit act, ount adiudge come in le preamble appiert, longe leases faits per Colledges &c. dẽe vn reasonable & incon̄ reason (a fortiori estate in fee simple &c.) & le ley q̄ est le perfection de reason, ne vnques expounder les parols del act enconter reason: 2. le Parliament ad adiudge eux causes de dilapidations: 3. destre decay ỏ touts spiritual livings: 4. decay de hospitality: & 5. le vtter impoverishment of successors Incumbents in the same: & ſ touts ceux insuist vn consequent fearefull et dangerous, s. decay del poyer Religion et spirituall worship de Dieu, car est record in history, que fueront (inter auters) 2. grievous persecutions, lun desouth Diocletian, lauter desouth Julian surnosme Apostata; lun de eux intendant dauer̄ extirpe touts les professors et preachers del parol de Dieu, & pur ceo le record dit, occidit omnes Presbiteros, mes ceo nient obstant religion florish, car sanguis Martyrum est semen Ecclesiæ, & vncore ceo fuit dire & grievous persecution, mes le persecution desouth lauter fuit pluis grievous et dangero⁹, quia (come le historie dit) occidit Presbiteriū, car il robbe Leglise, et spoile spirituall ysons de lour revenues, et dirept tout de eux dont ils poient viuer, & sur ceo in petit tẽps ensue grand ignorance del poyer Religion et service de Dieu, et per ceo grand decay de Christian profession, car nul voille applyer luy mesme, ou les fitz ou asc auter que il ad in charge, al studie de Diuinitie, quant ils aueront apres long et painefull studie riens dont ils poient viuer. Vide tout ceo de mote in mote in Leuesq; de Winchesters case in le 2. part de mes Reports fol.44.b. Et pur ceo fuit vnement resolue, que general Statutes

tutes q̄ur ꝑuidont necessary & ꝓfitable remedy pur maintenance de Religion, aduaucemēt de bone literature, et pur le relieue des poures, serr̄ extend generalm̄t solōq̄ lour parols, & Dieu defend q̄ per ascun construction le Roigne que fist le act oue lassent des Seigniors & Cōmons serr̄ exempt hors del ceo act de 13. Eliz. que prouide necessary & ꝑfitable remedie pur maintenāce de Religion, aduancement de bone literature, & relieue des poures: et hors de ceux Colledges, Deanes et Chapters &c. cybien le Eglise est furnish oue graue et erudite Diuines, p̄ instruction des Chzistians in voyer Religiō, come le Weale publiq̄ oue homes erudite in bone letters, pur le meliour administratiō de Justice cybien Tempozall come Ecclesiasticall, queux (s. Religion et Justice) sont les maine pillers queux suppoztant le Cozone le Roy, et pur ceo de touts auters le Roy q̄ come ad ẽe dyt est persona mixta, medicus regni, pater patriæ, & sponsus regni, que per annulum est espouse al Realme a son Cozonation, ne ꝑ exempt hozs de cest act p̄ construction del ley, q̄ serr̄ encounter reason, & cause de Dilapidations, decay de spiritual Liuings. de Hospitality, de vtter impouerishment des successozs, & per consequence ensuer̄ decay de Religion, & Justice, et pur ceo voyer est qd summa ratio est quæ pro Religione facit: & W. 1. ca. vltimo, summa Charitas est facere Iusticiam singulis, & omni tempore quando necesse fuerit. Et est ascauoire, que l'ley ne vnques presume q̄ ascun voit faire chose ou enconter Religion ou ascun religious dutie: Et pur ceo est resolue in Cholmeleys case in le 2. part de mes Reports, fo. 51. ou reuersion expectant sur estate taile fuit grant al vn pur vie de tenant in taile, et fuit dit que p̄ possibilitie cest graunt pur vie poet prender effect, car le tenant in taile ayant nul issue poet deueigne vn moigne et enter in Religion, & donques le grantee poet auer ceo durant son vie natural; mes est la resolue, q̄ tiel superstitious et irreligio⁹ profession ne serr̄ presume in ley. M. 10. H. 6. f. 8. J. S. pozt bre de Det vers Iohan. Rector de T. in Com. B. le def. dit, q̄ il fuit deuant le iour de bre purchase demurrant & conūsant a B. in le County de N. & non allocatur, car Parson ꝑ intend p̄ ley relident ꝑ son benefice pur le cure de almes q̄ il ad la, car parson q̄ ad cure ō almes & est non residēt, non est dispensator sed dissipator, non speculator sed spiculator, & p̄ nul tiel chose ꝓra p̄sume. Iesit in l'caz al barre le ley ne vnqs ferra cōstruer̄ enconr̄ le maintenāce de Religion, aduācem̄t de learning, & sustenāce des poures.

Est

Eſt purueu per leſtatute de 1.& 2. Ph.& Mar.cap.8. That it ſhould be lawfull &c. to giue lands, tenements, &c. by feoffemẽt, grant, or other aſſurances, or by his laſt Will and Teſtament in writing, to any ſpirituall body politique or corporate, nient obſtant leſtatute de Mortmaine: vn Allaine Clarke ſeiſie de certaine terres in Londres in fee, 4.& 5. Ph.& Ma. p ſon darreine volunt in eſcript, deuiſa eux al Maſter, Fellowes, et Schollers de Trinitie Colledge in Cambridge, et a lour ſucceſſors a touts iourz pur le trouer de certaine Grammar poures ſcholers &c. Et Mich. 8.& 9. Eliz. grand queſtion fuit moue: 1. coment que le dit Colledge ne eſtoyet ſolement ſur Diuines mes des auters auxy: 2. que lentent fuit a trouer Grammar Schollers &c. 2. que in leſtatute de 34.& 35. H.8 de explanation de volunts, corps politiq; & corporate ſont except hors de ceo: vncore per opinionem omnium Iuſticiariorũ vtriuſq; Banci & capitalis Baronis Scaccarij le deuiſe fuit ten⁹ bone, & leſtatute de 1.& 2. Ph.& Ma. (eſteant fait pur maintenance de Religion, aduancement de Learning, & exhibition des poures Schollers) doit ẽe fauourablement expound, & coment que les terres fueront tenus del Roy, vncore in tiel caſe le dit act fuit expound a lier le Roy. Iſſint les pols del ſtatute de 4. H. 7. de fines ſont general, vncore le ſucc̃ dun Eueſq, Parſon, Vicar, ou aſcun auter ſole corporation, ne ſerr̃ per conſtruction del ley lye, cõe corporation aggregate de pluſors ſerr̃, car donqs Leueſq ſans le Deane & Chapter, le Parſon ou Vicar ſans le Patrõ & Ordinarie &c. poyent per lour ſufferance lier lour ſucceſſor, q̃ ſerr̃ cauſe de dilapidation & diminutiõ de Eccleſiaſticall liuings, & pur ceo per conſtruction del general ley ſont except, cõe eſt tenus in Stowels caſe, Pl.Com. 376. & Howels caſe, Pl.Com. 538. Per leſtatute de 23. H.8.cap.10. eſt purueu, That all conueyances &c. to the vſe of Pariſh Churches, Churchwardens, Guilds, Cõpanies erected of deuotion or common aſſent &c. and all other like vſes and intents, ſhould be void: et vn Nicholas Guidſon eſteant ſeiſie dun wharfe & meſe in Londres, puis le dit act deuiſe eux al Alice ſa feme & ſez heires, ſur condition a foũder vn free Schole, & pur le ſuſtenance de certaine poures homes & poures femes, & ſi ceſt condition fuit enconter l'dit act de 23. H.8. fuit trahe in queſtion, Mich. 34.& 35. Eli. Reginæ, come appiert in le primer part de mes Reports, fol. 22. b. & la adiudge, que les dits generall parols del act de 23. H.8. ne extend a toller les dits bone & charitable vſes pur inſtructions

structions des Jeunes in bone literature & pur sustenance des poures, car la est dit, q̄ nul tēps cy vncharitable a toll' eruditiō & science, ne nul temps cy vncharitable a toller sustenance p̄ poures homes: illint que appiert per ceux cases que per construction del ley, terres conuey pur aduancemēt de learning, ou sustenāce des poures, ont ẽe p̄serue & maintaine enconter le general pols des dits acts: Mes ne vnques fuit vieu, que generall act fait p̄ maintenance de Religion, aduancement de learning, & sustenance des poures, serr̄ per construction del ley illint expound, que vn byway serr̄ layse out, per q̄ les dits grand & dangerous mischiefes remainer̄, & le necessarie & profitable remedy depres, car office des Judges est a faire tiel construction que represse le mischiefe & aduance le remedy, & a suppresser touts euasiōs pur continuance del mischiefe: et tiel byway ne serr̄ vnques erect per construction, coment q̄ soit pur le benefit le Roy: & ceo appiert per lact de 1. Eliz. per q̄ Archeuesques & Euesques sont restraine a faire ascr̄ conueyance &c. auter que pur 3. vies ou 12. ans, to any person or persons, bodies politique or corporate, other than to the Queene, her heires and successors: hors de q̄l act sont 3. materiall choses dēe observe: 1. que le Roigne ad ẽe include deins les dits parols de person and persons, bodies politique &c. si le dit exclusion ou exceptiō nad ẽe fait: 2. que si dit byway nust ẽe containe in m̄ lact, ceo ne vnques auoit ẽe raise per construction del ley: 3. que intant q̄ mesme les parols sont vse in le dit act de 13. Eliz. c. 10. to any person or persons, bodies politique or corporate, et nul exception ou exclusion fait del Roigne, per consequence appiert que fuit lentention des feasors del act q̄ le roigne serr̄ lye per ceo, et eo potius p̄ ceo que ils auoient vn cy bone paterne deuant eux come lact de 1. Reginæ Eliz. fuit, & coment que le voyer intent del dit exception in dit act de 1. Eliz. fuit pur le suppostation del Corone, vncore p̄ importunitie des suitors, nults estates & leases fuer̄ fait al roigne p̄ Archeuesq̄s et Euesq̄s, que intent a graunt̄ eux ouster al subiects al priuate vses: quel le Roy que ore est perceiuant, de son pious et religious care q̄ les possessions des Archeuesques ou Euesques ne serr̄ p̄ le dit byway diminish, p̄ act de Parliament en prim̄ an de son raigne et in le primer Session de ceo cap. 3. recitant, que ou Archeuesques et Euesques p̄ le ley ne poent conueyer ascun de lour possessions al auter subiect, et son treslexcellent Maiestie conulsant que diuers oue

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grand ſuit ont indeuour a fruſtrater le voyer intent del ley, de ſon Chriſtian & princely piety & care, entendant a ꝓtect les dits poſſeſſions de alienation ou diminution, pur le melieur maintenance del voyer Religion de Dieu & Hoſpitalitie, & pur auoider Dilapidations, et per ceo pur tout temps et apres de auoider touts Suits et impoꝛtunities concernant aſcun des dits poſſeſſions, auoit de ſon mere & pious motion vouchſaked q̄ ſerra enacted, Que cheſ̄ Archeueſqꝛ et Cueſqꝛ et lour ſucceſſoꝛs ꝑtout apres le fine de m̄ le Seſſ. de Parliam̄t tout ouſterm̄t diſable en ley a faire, leuier, ou ſuffer aſcun alienac̄, aſſurance, demiſe, charge, ou conueiāce de lour poſſeſſ. al roy, ſes h̄rs ou ſucceſſ. Et q̄ cheſ̄ tiel alienac̄ &c. ſer̄ tout ouſterm̄t void et de nul effect a touts intents, conſtructions, et purpoſes.

Le 2. reaſon eſt, que le roy ne ſer̄ exempt per conſtructiō del ley hoꝛs des generall parols des acts faits a ſuppꝛeſſer toꝛt, pur ceo q̄ il eſt le fountaine de Juſtice & common droit, et le Roy eſteant le Lieutenāt de Dieu ne poet faire toꝛt, Solum Rex hoc non poteſt facere, qd non poteſt iniuſte agere, & one ceo accoꝛd 13. E. 4. 8. & in l' caſe de Altō woods in le primer part de mes Reports, fol. 44. &c. Et comēt q̄ droit fuit remedieſſe, vncoꝛe lact que pꝛouide neceſſarie et pꝛofitable remedy pur le pꝛeſeruation de ceo & a ſuppꝛeſſer toꝛt liera le Roy, come appiert in le Seignior Barkeleys caſe Pl' Com' 246. ſi ten̄ in taile deuant leſtatute de Donis conditionalibus vſt alien ou deuant liſſue a barrer liſſues in taile, ou apꝛes iſſue a barrer cibien le donoꝛ come les iſſues in taile, fuit toꝛtiō, mes nul remedie fuit done pur ceo tanqꝛ leſtatute de Donis condic' anno 13. E. 1. fuit fait, quel act dit, Dominus Rex perpendens, quod neceſſarium & vtile eſt in præd. caſibus apponere remedium &c. ſtatuit, qd non habeant illi quibus tenementum ſic fuit datum ſub condic' poteſtatem alienandi &c. et le Seigniour Barkeleyes caſe fuit, que terre fuit done al Roy H. 7. et a les heires males de ſon coꝛps, et le queſtion fuit, le quel le Roy, intant que il ne fuit exꝑꝛeſſement reſtrain per lact, poſt prolem maſculum ſuſcitatum, poet alien ou nemy: et fuit adiudge que il ne poet alien, mes que il eſt reſtraine per le dit act pur 3. cauſes. 1. Pur ceo que tiel alienation deuant leſtatute fuit toꝛtious, com̄ q̄ tiel toꝛt fault remedie, car la eſt dit ſer̄ dure arguñt a grant q̄ leſtatute que reſtrain homes a faire toꝛt et male, permitter̄ liberty al roy a ceo faire. 2. Intant que le dit act eſt ſtatutum remediale et pꝛouide remedie

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pur ceſt remedie ſſe tort, et que fuit neceſſarie et profitable a prouider tiel remedy, fuit adiudge q̄ ceo liera le roy: 3. pur ceo que ceo fuit act de preſeruation des poſſeſſions des Nobles, Gentlehomes, & auters, ceo aury liera le roy: et le dit act ne lia le roy ſolement quant il prist eſtate in ſon natural capacitie, come a luy & a ſes heirs males de ſon corps, mes aury quant il claime inheritance come Roy per ſon Prerogatiue, et pur ceo ſi teñ in taile puis le dit act ſoit attaint d haut treaſon, comt q̄ le Roy claime le forfeiture come Roy & per ſon Prerogatiue, vncore le roy eſt lye per le dit act, car nul forfeiture ſra a barrer iſſue in taile cōe fuit al common ley, come eſt tenus 7.H.4.31. 8.H.4.9. 7.R.2.tit. Aide del Roy. Iſſint in le caſe al barre, le dit act de 13.El. ad touts lez ditz 3. qualities, car 1. ceo fuit a ſuppreſſer tort: car dilapidations, et diminution des Eccleſiaſtical liuings &c. come appiert deuant, ſont torts, & tiels torts q̄r ſont quodam modo puny per la ley, car le Maiſter, Deane, &c. pur dilapidations, ou degaſter, ou diminutiō des reuenues de lour meaſon, poet ē e depriue, come appiert in 29.E.3.16. 2.H.4.3. 11. H.6. 20.H.6.46. 9.E.4.34. 35.E.1. reſolue in parliament tenus al Carliſle, quo vide deuant in le caſe de Rich. Liford fol.49. et vn notable Record in 19.E.3. Rex amouit cuſtodem hoſpitalis de ſuo Patronatu, quia male diſpendit proficua domus &c. pur ceo que eſt enconter lour office & duty a degaſter les poſſeſſions de lour meaſons q̄r ſont commit a eux pro bono publico. 2. Ceſt act de 13. Eliz. eſt actus remedialis, & fuit neceſſary & profitable a puruier tiel remedy pur le publique bone del entier eſtate Eccleſiaſticall &c. 3. Ceſt act eſt act de preſeruatiō. s. a preſeruer les poſſeſſions dez Colledges, Deans & Chapters, Hoſpitals, &c. et pur ceo pur touts ceux 3. cauſes liera le Roigne. Et ou eſt purueu p̄ leſtatute de W.2.cap.5 qd quotieſcunque aliquis ius non habens tempore hui uſmodi cuſtodiar' præſentauerit &c. fuit reſolue per *Coke* chief Juſtice, *Croke*, *Doderidge*, & *Houghton* Juſtices, q̄ ceſt act fait a ſuppreſſer tort lyera le Roy, & iſſint le ley bien reſolue in vn cas q̄ eſt layſe doubtful in 35.H.6.f.60. Ratcliffes caſe. Et a concluder ceſt reaſon eſt notablemt dit in 24.E.3.41. q̄ la ley eſt reaſon & eqty a faire dit a touts, & a ſatī homes de tort & miſchiefe, & pur ceo le ley ne vnqs ferra conſtruction enconr ley, equity, & droit.

Le 3. reaſon, que les general parols des ſtatutes queux tendont a perforin le volunt del Founder ou Donor, liera le

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Roy coment que ne ſoit noſme, & ceo appiert in ſtatuto Templariorum anno 17.E.2. ou eſt dit ita ſemper quod pia & celeberrima voluntas Donatorū in oibus teneatur & expleatur, & perpetuò ſanctiſſimè perſeueret. Et le dit act de Donis condic' eſt notable a ceſt purpoſe, car la appiert, que fuit neceſſary & profitable que le volunt del donor ſerr̄ obſerue: les parols ď q̄l act a ceſt purpoſe ſont, propt' quod Dominus Rex perpendens quod neceſſarium & vtile eſt &c. apponere remedium (& quel fuit tiel remedy) ſtatuit quod voluntas donatoris in carta doni ſui manifeſtè expreſſa de cætero obſeruetur: le quel lia le Roy come eſt adiudge in le dit caſe del Seigniour Barkeley, ou fol. 247. eſt dit, que homes doyent obſeruer le entent ou volunt des auters homes, et de infringer ceo eſt male. Et in le caſe al barre lentent del Founder del dit Colledge fuit pur maintenance de Diuines, aduancement de liberall Arts et Sciences, & a educat̄ poures ieunes in v̄tue & bone Literature, q̄ Dieu defend q̄ ne ſ̄ra p̄forme: & p̄ ceo eſt pluis fort caſe, & in pluis pious & publique degree q̄ le dit act de Donis condic', q̄ fuit purueu p̄ p̄ſeruation des p̄iuate eſtate tailes aux p̄ticular families.

Le 4. reaſon eſt, que le Maiſter & Fellowes del dit Colledge ſont per le dit act diſable a graunter, et donques ſils ſont diſable a graunter, le Roigne ne poit p̄nder de eux que ſont iſſint diſable, les parols del act ſont, all Leaſes, Gifts, Graunts, &c. to be made &c. or ſuffered by any Maiſter and Fellowes of any Colledge &c. ſhall be vtterly void and of none effect, to all intents, conſtructions, and purpoſes, any law, cuſtome or vſage to the contrary notwithſtanding, q̄ eſt tant a dire que chelcun Maiſter et Fellowes dun Colledge ſerra diſable a faire alc̄ Leaſe, Gift, Graunt &c. mes que chelcun tiel Leaſe, Gift, Graunt &c. ſerr̄ ouſterñt voide a chelc̄ intēt & purpoſe, car quant p̄ authority de Parliam̄t les graunts dēe faits p alc̄ Maiſter & Fellowes dun Colledge ſon faits tout ouſterñt void a toutz intētz &c. p̄ ceo les Maiſter & Fellowes ſont diſable p̄ Parliam̄t a faire alcun graunt, car in chelcun graunt couient ēe grañtor, grauntee, & choſe dēe graunt, et q̄ñt le graunt del choſe eſt fait void p̄ ceo le grañtor eſt diſable a grañter ceo. Mes ceſt diſabilitie neſt ſimplicitèr, ſed ſecundum quid, car ſi le Maiſter & Fellowes dñ Colledge font tiel grant, ceo ne ſerr̄ voide p̄ le Maſter m̄, mes p̄ ſon ſucceſſor, cōe fuit reſolue in ceſt caſe, & ſouēt foits auoit ēe reſolue deuant ceſt temps.

Le 5. reaſon, in acts de Parliament que ſont dẽe conſtrue ſolonꝯ intent & meaning dez feaſorꝯs de eux, loriginal intẽt & meaning eſt dẽe obſerue: Et appiert q̃ lentent del Maiſter & Fellowes fuit, que ils conueyer̃ le dit meſe al Benedict Spinola & ſes heires, & pur ceo que ils ne poient faire ceo de directo, ils attempt a faire ceo ex obliquo, a graunter ceo al Roigne & ſes ſucceſſorꝯs, mez ſur condition cõteine in meſme le graunt, que le Roigne deins 3. mois graunter̃ le dit meſe al dit Benedict Spinola & ſes heires, iſſint que fuit indeuour, que le Roigne, que fuit le fountaine de Juſtice, ſerra p̃ fait inſtrum̃t de Iniury & tort, & dũ violation dun pious & excellent ley, q̃ il meſme p̃ le maintenance de Religion, aduancemẽt de liberal Arts & Sciences, & pur ſuſtenance des pours, ad fait. Et ou le Maiſter & Fellowes fuerõt ſeiſi del dit meſe a eux & lour ſucceſſorꝯs a touts iourꝯ in iure Collegij pro bono publico, & aux pious & charitable vſes, ozeũ ſerr̃ cõuert p̃ le pꝛiuate vſe del Spinola & ſes hẽs a touts iourꝯ, ſicque (come leſtatute d̃ Carliſle, ann. 35. E. 1. ple) quod olim in vſus pios ad diuini cultus augmentũ & cætera opera pietatis charitatiuè fuit erogatũ, nunc in ſenſum reprobũ eſt conuerſum: & le Poet bñ repꝛehend ceo.

——— Fuit hæc ſapientia quondam,
Publica priuatis ſecernere, ſacra profanis.

Et fuit reſolue, que le ley ne vnques voet faire interpꝛetation de aduancer vn pꝛiuate, & a deſtroyer le publique, mes touts foits daduauncer le publique, & a pꝛeuenter cheſcun pꝛiuate, que eſt odious in ley in tiels caſes: Et pur ceo eſt bien dit in Heydons caſe in le 3. part de mes Reports, fol. 7. b. loffice des Judges eſt touts foits a faire tiel conſtruction que repꝛeſſer̃ le miſchiefe, et aduauncer̃ le remedie, et a repꝛeſſer ſubtill inuentions et euaſions pur continuance del miſchiefe, & pro priuato commodo, & a adder force & vie al cure et remedy ſolonꝯ le voyer intention des feaſorꝯ del Act pro bono publico: Et ſi ſerra loiall pur Maſters & Fellowes des Colledges, Deanes & Chapters, &c. a conueyer al Roigne oue tiel condition a graunter a vn ſubiect, ſauns queſtion tiel conſtruction tender̃ al continuaunce del miſchiefe & pro priuato commodo: Et pur ceo in 17. Ed. 3. 59. les Freers Carmelites, que adonques nauoient lieu de habitation, obtaine dun John Merite, que fuit ſeiſie d̃ x. acres

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de pree tenus del Euesq; d Winchester, dauer les dits acres de pree pur vn lieu de habitation pur eux, & pur ceo q John Merite ne poit grant a eux les dits x. acres per reason del statute de Mortmaine, per couin taile int le dit John Merite et les freres Carmelites, a toller leuesque de son Seignior que fuit le impediment, le dit John Merite (p faire euasion hors del statute de Mortmaine) granta lez ditz x. acrez al Roy ses heires et successors, p q le Seigniory del Euesq; sera extinct, al entent q le Roy grauntera e ouster al freres Carmelits, q e fist accord, & p c q e fuit p couin taile adeuant, & a toller leuesque d son Seigniory, fuit adiudge, q le dit Chre sera repeale, & q lez freres Carmelitz sera distreine a render l' Chre dee cancell: hors de quel case 5. choses fuer obserue. 1. Que cesty q fait le Roy q est le fountain de Justice dee instrumt de couin & fraud, & sur e obteine les lres P. q ilz sont void, quia dolus circuitu non tollitur. 2. Si l' Roy soit endeuor dee fait instrumt a toller auter de s droit, et au cest sine home obtaine lres patentes, que tielz lres patents serra repeale. 3. Comt q tiel couin & fraud ne fuit conteine in le grant fait al Roy, mes appiert solemt p auermt dehors, vnc le patent sera repeale. 4. Comt q les freres Carmelites fuer d pfession de religion, & nauoient ascun habitation deuant, issint q e sembl dee oure de pietie & charitie a puider habitation pur eux, vnc Non facias malum vt inde fiat bonū. 5. Que tiel Chre issint obteine fuit adiudge dee repeale per le common ley: et semblable case 21.E.3.46.b. le Maister & Schollers de Mertons case. Vide Bracton in le comencemt de son 2. liure, Nihil aliud potest Rex in terris, cū sit Dei Minister & Vicarius, quam quod de iure potest, *& paulo post*, Itaque potestas iuris sua est, non iniuriæ, & (obserue bien) cum sit autor iuris, non debet inde iniuriarum nasci occasio, vnde iura nascuntur. Et le chiefe Justice dit, q si vn q intend a vender son tre, vst p fraud conuey e per fait inrolle al Roigne al intent a deceiuer le pchaser, & puis il vende la tre al vn auter pur valuable consideration, & fait conueyance accordt, in cest case le purchaser enioyera la tre encounter le Roigne per l'estatute de 27. Elizab. cap. 4. car coment que le Roigne nest except, vncore lact esteant general & fait in suppressing de fraud, liera le Roigne. Issint il dit si ten in taile soit seisie de tre, rem ouster in taile ou in fee, & cesty in le rem, sachant que ten in taile voile aliener la tre, & per recouery barre son remainder, al intent a depriuer l' ten in taile de son

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birthright & power que le ley done a luy a barrer le rem̃, & de purpose & intent a deceiuer le purchaser, graunt son remainder al Roigne per fait inroll, et puis tenant in taile, pur valuable consideration, alien la t̃re p̃ common recouery & mozust sans issue, le purchaser enioyer la t̃re vers le Roign per le dit statute de 27. Eliz. les parols de quel sont, That euery conueiance &c. made &c. to the intent and of purpose to defraud and deceiue any purchasers &c. shalbe deemed only against such purchaser &c. to be vtterly void: In queux parols est dẽe obserue que tiel former fraudulent conueiance fait per le vendoz mesme, ne ſt pas solement restraine, mes generalment q̃ chescun conueyance fait de purpose et intent a deceiuer vn purchaser serra voide; et pur ceo le conueyance del rem̃ al Roigne, of purpose and intent a deceiuer vn purchaser, est directment deins les parols & puruieu del act: & de tiel opinion fuit Popham Chiefe Justice ouertment in Leschequer Chamber. Et les dits cases de 17. E. 3. 59. & 21. E. 3. 46. sont pluis foꝛt que ceo est, ou le party grieue fuit relieue per le common Ley, intant que le Roy ne poet ẽe instrument de fraud & deceit, & cum sit author iuris, non debet inde iniuriarum nasci occasio, vnde iura nascuntur. Vide Cholmeleys case in le 2. part de mes Reports fol. 51. 52. Et fuit dit que le ley ad done al Roy vn grand pꝛerogatiue ouster ascun de ses subiects, q̃ ou p̃ fraud ou faux suggestion il est deceiue, q̃ il m̃ in tiels cases auoidꝛa s̃ grant demesne iure Regio, & ceo appiert ann. 21. E. 3. 47. in le Countee de Kents case, & Stanford prerogat' Regis 84. a.

Le 6. reason, q̃ lestatute ad fait void touts leases, grants, &c. auk q̃ pur 21. ans ou 3. vies, dont accustomed rent ou piuz est reserue, q̃l expꝛesse & demonstrate de ceux deux pticular cases, excludont touts auks.

¶ Et quant a touts les cases queux auoyent este mise del auter part fuit resolue. 1. Que nul de eux impugne ascun de ceux reasons ou grounds. 2. Que ou le Roy ad ascun pꝛerogatiue, estate, dꝛoit, title, ou interest, que per generall parols dun act il ne serra barre de eux, come in le dit case de reasonable aide le Roy ad estate et interest in ceo, et pur ceo les generall parols del act de W. 1. cap. 46. ne serr̃ extend a ceo. Auxi le Roy ad pꝛerogatiue quod nullum tempus occurrit Regi, & pur ceo les generall acts de limitations, ou del plenarty, ne extendꝛa a luy: issint le Roy per son pꝛerogatiue

tūe poit ſuer in q̄l court il voet, & de ce̅ p̄rogatiue il neſt bark̄ p̄ le generall purueu del act de Magna Carta cap. 11. & ſic de cæteris. Mes in le caſe al bark̄ le Roy neſt exclude daſcun eſtate, droit, title, intereſt, ou p̄rogatiue q̄ il auoit deuant l'act in le dit meſe; & pur ceo p̄ touts ceux reaſons fuit conclude, q̄ ceſt act de 13. Eliz. lieſ̄ le Roigne. Nota Lecteur, que le generall ſtatute de 32. H. 8. cap. 36. de fines pur auoyding des controuerſies liera le Roy, come appiert in le 7. part de mes Reports fol. 22.

Quant al number des leaſes quex ount ce̅ faits puis le ſtatute de 13. Eliz. per Maiſter & Fellowes des Colledges, Deans & Chapt̄s, Maiſters des Hoſpitals &c. a ce̅ fuit p̄ude. 1. Que ce̅ fuit pluis ex conſuetudine Clericorū, q̄ux imitate p̄ſident̄s de leaſes faits deuant 13. q̄ daſcun ſage aduice des homes appriſe in ley, 2. multitudo errantiū non parit errori patrociniū. 3. le conuenience eſt griender & co̅ne pluſors p̄ſons, & in vn pluis haut degree de ceſt pt q̄ del auc̄, car in lez famous Vniuerſities d̄ Cāb̄ridge & Oxford la ſont 42. Colledges, oulc̄ les Colledges de Weſtm̄, de Wincheſter, d̄ Eaton, de Greſhā &c. 2. ſont 24. Deanes & Chapt̄s, Archdeaconries 60. Dignities & Prebēds in Cathedrall Churches 400. Parſonages & Vicarages 8803. Hoſpitals dū exceeding grād nūber: iſſint q̄ a do̅ a touts ceux & a lour ſucceſſ. power des tēpz in tēpz a toutz iourz p̄ vn mean ou byway d̄ alener les poſſeſſions des Colledges, Deanes & Chapters Archdeacōries, Prebēds, Parſonages, Vicarag. hoſpitals &c. q̄ux fuer̄ done a religio⁹, pio⁹, charitable, & publike vſes, ſer̄ de greinder inco̅uenie̅ce & cōſeq̄nce, q̄ le ſubūting d̄ certain eſtats & leaſes faitz puis lact de 13. Eliz. des poſſeſſ. ou des Eccl'ical p̄ſons, ou des poures, originalm̄t don p̄ maintenāce des oures de piety & charity, & oze träſfer al p̄riuate p̄ſons, & cōūt a p̄riuat vſes, & le reſtoring ceux poſſeſſions a lour originall fo̅dac̄ ou indowm̄t, s. p̄ maintenance de religion, aduancem̄t de liberall arts & ſciences, ſuſtenance des poures, & auc̄z oures d̄ charity pro bono publico. 4. ceo tendera al grand p̄iudice de Archeueſq̄ries, & Eueſqueries, car ſi Deanes & Chapt̄s aūont power daliener non ſolem̄t lour poſſeſſions, mes lour Cathedrall Eſgliſes, ou ſer̄ donques Cathedra Ep̄i? & ou ſer̄ ſes Prebends qui præberent auxiliū Epō in cōſultatiō p̄ ſuppreſſing de hereſies & erroꝛs, & in voier inſtruction des homes in religion & ſpiritual worſhip de Dieu cōmis a lour charge, & in celebratiō d̄ diuine ſeruice &c.

Issint de Archdeacons &c. 5. Ne fuit vnques alcun iudiciall opinion in alcun Court que le Roigne ne fuit lye p̄ lact de 13. Elizab. mes del auter part ad ẽe diuers foits resolue in le pluis haut Court de Justice, que le Roigne Elizab. fuit lie per le dit act, & pur ceo fuit resolue al Parliament tenus Ann. 43. Reginæ Eliz. p̄ Popham & Anderson chiefe Justices & diuers auts Justices assistants des Seigniors del Parliament, que le Roigne fuit lye per le dit act de 13. Eliz. & quel ieo ay repoꝛt in mon 5. Liure fol. 14. in le case de Ecclesiastical persons: Quel resolution des Judges, les Seigniours & Commons del Parliament foꝛt bien allow, & pur ceo in lact de confirmation a mesme le Parliament des graunts &c. faits al Roigne, & des grants faits p̄ le Roigne (viz. 43. Eliz. cap. 1.) in le clause des grants &c. faits al Roigne, la est vn exception in ceux parols, other then conueiances, or estates heretofore had or made by any Ecclesiasticall person or persons, bodies politike or corporate, not hauing power or ability by the Lawes of the Realme to make the same; p̄ queux parols tout le Parliam̄t appꝛoue bñ le dit resolution de Judges quant a cest point.

Auxy al Parliament tenus 1. Iacobi quant le Bill des Euesques fuit lie a restreiner eux a conueyer al Roy &c. fuit moue p̄ le treshonorable Archeuesque Whitgift, que Deanes et Chapters & auters ayant Ecclesiasticall liuings &c. ser̄ restraine, & insert in le dit bill auxy, cibien come Archeuesques & Euesques: Et fuit arere resolue per les Justices assistants a mesme le temps, que ils fuer̄ restraine per lestatute ô 13. Eliz. a faire alcun conueiance al Roy dalcun part de lour possessions, & issint fuit dit ad ẽe resolue deuant cest temps, & a cest cause ils fuer omit hoꝛs del dit Bill concernant le disabilitie de Archeuesques & Euesques a mesme le Parliament de Anno 1. Iacobi Regis. Et de quel authoꝛitie le resolution des Judges Assistants in Parliam̄t est, appiert in 39. E. 3. fol. 1. b. Le Duke de Lanc̄ & Blanch sa feme, poꝛt Scire facias vers le Lady Latimer, & question fuit moue concernant labatement del dit iudiciall bꝛiefe, et la Thorpe chiefe Justice relate al Court, q̄ il fuit in Parliament quãt tiel question fuit debate, & la fuit resolue, que le bꝛiefe nabatera: A q̄ Cauendish Serieant dit, Sñs vous estes nostre Judges, & nous nauonus auters Judges que vous in cest place; auxi ceo que fuit resolue in Parliam̄t nest de recoꝛd,

&

& ſi vous adiudgera que nous reſpondr̄, nous r̄dr̄ons aſſets bien: A que Thorp chiefe Juſtice (que done le rule del Court) dit, Nous q̄r̄ ſumus Judges poiomus ceo recor-der cibien come fuit in eſcript, et de ceo que eſt adiudge la, nous ne voillomus adiudge le reſs, p̄ q̄ reſpondes, ſur quel liure le chiefe Juſtice forment reſa, cibien pur lauthoritie del reſolution des Judges in Parliamēt come pur le credit del repoꝛt des Juſtices. Nota Lecteur, come eſt obſerue in le caſe de anno 43. Reginæ Eliz. fol. 14. le dit act de 13. Eliz. ad eſte touts foits conſtrue beneficialment a preuenter touts inuentions & euaſions enconr̄ le voier intention de meſme lact, come appiert la per diuers reſolutions la repoꝛt: Et auxi q̄ ſouent foitz ad ēe tenus, q̄ ou leſtatute dit Maiſter et Fellowes daſcū Colledge, ſoit le Colledge incoꝛpoꝛate p nō le noſme, ou p le noſme de Gardian & Fellowez, ou Gardian & Scholleꝛs, ou Gardian, Fellowes et Scholleꝛs, ou per l noſme de Maiſter, Fellowes et Scholleꝛs, ou Maiſter et Scholleꝛs, ou Pꝛouoſt, Fellowes & Scholleꝛs, ou per aſcun auter noſme de Coꝛpoꝛation, & ſoit le Colledge tempo-rell pur aduauncement de liberall arts & ſciences, ou a edu-cater ieunes in bone literature, ou mere Eccleſiaſticall, ou mixt, cheſcun tiel Colledge eſt deins le ꝓuiſion de ceſt act: meſme la ley ou leſtatute dit Maiſter et Gardian daſcun Hoſpitall, ſoit le Hoſpitall encoꝛpoꝛate per aſcun auter noſme, ou ſoit ceo vn ſole Coꝛpoꝛation, ou Coꝛpoꝛation aggregate de pluſoꝛs, leſtatute extend a touts manners des Hoſpitals, & ſic de cæteris, car ceſt act touts foitz ad ewe be-nigne & fauoꝛable conſtruction.

¶ Quant al 2. point fuit reſolue, que leſtatute de 18. Eliz. cap. 2. nad done aſcun vigoꝛ ou effect al dit graunt fait al Roigne, mes q̄ apres ceſt act le graunt remaine de meſme le foꝛce come fuit deuant ceſt act, & ceo pur iij. cauſes. 1. Ceſt conueyance al Roigne eſt hoꝛs del l're del act de 18. Eliz. pur 2. cauſes. 1. Pur ceo que les parols del Statute ſont, Where ſince the 18. of Nouemb. in the firſt yeare of her Maieſties raigne, diuers and ſundry Manors, Lands, Tenements, &c. haue bene conueyed and aſſured to her highneſſe, her heires, and ſucceſſors, by and from diuers and ſundry perſons and bodies politike, aſwel for ſatisfaction of great debts and ſummes of money, as for other good conſiderations: for the perfect aſſurance, confirmation, and further ſurety whereof, Bee it enacted, that all feoffements,

ments, fines surrenders, assurances, conueyances, & estates, &c. to or for our Soueraigne Lady the Queene her heires & successors, by or from any person or persons, bodies politiques or corporat, of any manors, lands, tenemts, &c. for any debt, sum or summs of mony or other consideratiõ whatsoeuer, shal stand &c. good &c. issint q̃ appiert q̃ soleñt tielz cõueiãces sont estably p cẽ act q̃ sont faitz p̃ satisfacẽ de debts, & sums dargent, ou auk̃ bõe consideration, q̃l pols in le p̃amble sont cõuerte al corps del act, car maintenant apꝛs ñ iez polz, lestatut dit, p̃ le pfect assurance &c. wherof be it enacted, & p̃ cẽ comt̃ q̃ les pols sont in le corpz del act, for any debt, sums of mony, or other consideration whatsoeuer, ink̃ leseant (bone) deuant consideration, vnc̃ cest necessarement imply, non soleñt p le dit connexion del p̃amble al purueu, mes auxi est imply in cẽ pol (cõsideratiõ,) car An' 16. Eliz. Dyer 336. b. consideratiõ ẽ describe dẽe Un cause ou occasion meritozio⁹, requirant vn mutuall recõpence in fait ou in ley, & intãt q̃ le dit grant al Roigne Eliz. p̃ le dit Master & Fellowes del dit Colledge del dit mese, ne fuit p̃ alcũ debt sum dargẽt, ne auk̃ bone cõsideration, a cest cause le dit grãt fuit hoꝛs del ꝛre del dit act: Et fuit obserue q̃ le Roigne ne vnqs paiet̃ le dit Rent reserue sur le dit grant, car le rent est paiable soleñt al feast de S. Michael Larch. et p force del dit condition q̃ est compulsary, le Roigne doit grant ẽ ouster deuant le 1. iour de Apꝛill, ou forfeitũ son estate. 2. la ne fuit soleñt omission dũ bone cõsideration, mes auxi additiõ dũ male & fraudulẽt pꝛactise, a faire le roigne q̃ fuit le fountaine de iustice, dẽe vn instruñt & ẽ cõpulsareñt p condition (q̃ in verity fuit inconk̃ le honoꝛ & dignity del Roigne) a conueier ẽ al subiect, k̃ dit Benedict Spinola, & tout ẽ a faitz euasion (si poit ẽe) hoꝛs del dit act de 13. Eliz.

2. Admittãt q̃ le dit grant ad ẽe p̃ satisfaction de det, sum dargẽt, ou auk̃ bone consideration, vnc̃ le dit act de 18 ne serũ extend a cest case: p̃ le melieur apꝛehensiõ ò q̃, & p̃ le voier intelligence et construction del dit act, est ascauoire, q̃ quant a cest purpose, sont v. kinds des disabilities ou impfections p q̃ꝛ faits ou auters instruñts et conueiances al Roigne poient estre impeach. 1. In respect del disability del person del grãtoꝛ. 2. Per reason del nature del chose grãted. 3. Del state del grantee. 4. Del maner del grant q̃ nad legal foundatiõ. 5. In respect del omission dascũ circumstãce requisite p ley, mes ayant firme cõmencemẽt ou foundation. Quãt al

pꝛimer,

primer, persons sont disable, ou per common ley, ou per act d̄ Parliament; per common ley, come per reason de infancie, profession, ideocy, non sane memorie, couerture, &c. Auxy de ceux disabilities per common ley, ascunz sont absolute, come infants ou moignes, queux ne poient fait̄ ascun act que eux lieī, mes que ceo per ley poit ẽe in tẽps auoid, & ascuns disabilities sont secundū quid & nẽy simplicitèr, & p̄ ceo si ideot, non compos mentis, feme couert, fait ascun conueyance, sinon que soit p̄ fine ou recouery ils sont auoidable: Jssint Eueskz sans le Dean & Chapter, Parson ou Vicar sans le Patron & Ordinary, Prebend sans Leueskz, Deane & Chapter &c. et autiels semblable, ount power a disposer lour possessions durant lour incumbency, mez nemy a preiudicer lour succes-sorz; disability per Parliam̄t, come Maister & Fellowes des Colledges, Deans & Chapters, & auks nosmes in dit act de 13. Eliz. & ore Archieueskes & Eueskes p̄ le statute de 1. Iac. Regis cap. 3. touts queux sont disable a faire ascun chose in preiudice de lour succ̄. Quant al 2. in respect del nature del chose granted, come si le donee in taile tient de son donor per fealty, et le donor per fait inroll graunt le fealty al Roy, cest grant est merement voide, quia incident inseperable al reuersion, come est tenus in 26. ass. p. 66. Jssint si vn founder dū Colledge &c. voille graunt son foundership al Roy per fait inroll, ceo est voide, car ẽ inseparable al sanke, come est ten⁹ temps H. 8. Brooke tit. Quant al 3. in respect del state, come teñ in taile de tre, p̄ fait inroll grant la tre al Roigne in fee, c̄ ne lieī son issue in respect de s̄ estate taile. 4. Quant al maner de grant, q̄ nad legal foundation, cõe si home seille del tre in fee grant la tre aps̄ s̄ mort al Roigne ses heires & succes-sorz, ou autielz semblables q̄ sont encounk̄ les rules del ley. 5. Mñt al omission dascū circumstance, cõe si home soit seisie de tre in fee, & p̄ fait in satisfaction dū det ou summe dargẽt ou auk̄ bone consideratiõ grant c̄ al Roigne ses heires & suc-cessorz, & cest fait ne vnq̄s fuit inroll, icy fuit bone cõmence-ment mes fault inrolemt.

Pur le primer, est ascauoire, q̄ le generall parols del dit act de 18. Eliz ne inhableī ascun person a faire ascun conuei-ance q̄ per le common ley fuit disable, come si infant vst con-uey terre al Roigne per fait inrolle, ceo nest estably per le dit act, pur ceo q̄ le person del infant durant son minorities fuit absolutement disable, issint si enfant leuy fine al Roigne Eliz. deuant le dit act de 18. Eliz. & puis le dit act fuit fait,

vncore

vncore lenfant, nient obſtant leſtatute, poit reuerſer le fine per briefe de Erroꝛ, et illint fuit reſolue Mich. 32. & 33. Eliz. in Banke le Roy per *Wray* chiefe Juſtice & totam Curiam in Vaughans caſe. Et le reaſon de ceo eſt proue per le rule de noſtre auncient liures, ceſtaſcauoir, in 22. E. 3. tit. Corone 276 Et puruieu per leſtatute de W. 2. cap. 12. quòd ſi appellatus de felonia &c. ſe acquietaũrit &c. reſtituant huiuſmodi appellatores damna appellatis. Et le caſe fuit que vn Appeale de moꝛt fuit poꝛt vers vn moigne, que fuit acquite, & ſur ceo il pꝛia ſes dammages ſolonque le dit act, mes (pur ceo que moigne fuit perſon diſable per le common ley a recouer aſcun dammages, & les generall parols del act ne enable aſcun perſon que fuit diſable per la ley) a ceſt cauſe eſt la tenus, que il naucra aſcun dammages: meſme la ley come la tenetur, ſi Appeale ſoit poꝛt vers feme couert et el ſoit acquite, el naucra dammages, car el eſt diſable per la ley a ſuer ſole. Eſt puruieu per leſtatute de Marlebridge cap. 6. que le Seignioꝛ per ſeruice de Chiꝛe ne perdꝛa ſon cuſtody per feoffement fait p colluſion, veruntamen non licet eis huiuſmodi feoffatos ſine iudicio diſſeiſire, ſed breuia habeant de huiuſmodi Cuſtodia ſibi reddenda, vnde ſi le teñ infeoffe le villein del Seignioꝛ ſur colluſion, le Sñr poit enꝰ & expeller luy, & ne ſerꝰ miſe al action, come tenetur 33. H. 6. 16. car les generall parols del act ne enablera le villein q̃ eſt diſable vers ſon Sñr p le cõmon ley, & pur ceo ſi le Seignioꝛ poꝛt action vers luy ſolonꝙ le letter de ley, il ſerꝰ infranchiſe: à fortiori in le caſe al barre, quant le Maiſter & Fellowes del dit Colledge ſont diſable per act de Parliament de Anno 13. Eliz. a faire graunt a lier lour ſucceſſoꝛs, les generall parols del act de 18. Eliz. ne enhablera eux a faire aſcun ſtate enconꝰ le dit act de 13. Eliz. Illint ſi Eueſqꝛ ſans aſſent del Deane & Chapter, p fait inrolle vſt graunt fee al Roigne ſes heires & ſucceſſ, & puis leſtatute de 18. Eliz. eſt fait, ceſt grant nẽ fait bone vꝭ les ſucceſſoꝛs, car le pſon del Eueſqꝛ eſt diſable a graunter ceo ſauns laſſent del Deane & Chapter, a lier ſon ſucceſſoꝛ; et illint fuit reſolue in 23. Eliz. come le Seignioꝛ Dyer repoꝛt, quel ieo ay deſouth ſon maine, mes ceo eſt omit hoꝛs del pꝛinted liure: meſme la ley de Pꝛebend, Parſon &c. Mes ſacheꝭ Lecteur, que la eſt vn diuerſitie inter generall act, ſ. by or from any perſon or perſons, bodies politique or corporate, come le dit act de 18. Elizab. & vn act que ſpecifie & mention particuler kinds de coꝛpꝭ politique et coꝛpoꝛate, cõe leſtatute de

1. E. 6.

1.E.6.ca.14. **de Chaunteries** verſ. finem, by which it is enacted, that euery gift and grant heretofore made to the late King and to his heires, or to our Soueraigne Lord the King that now is, and to his heires, by any Archbiſhop, Deane, Archdeacon, Treaſurer, Prebendary, &c. of any Mannors, lands, tenements, &c. to any of the ſaid Benefices, Prebends, &c. belonging, ſhall be good and effectuall in the law to all intents and purpoſes. **Et in** Paſch. 7. Reginæ Eliz. inter Wharton & Morly **in Leſchequer, le caſe fuit, que vn Prebend de Yorke per fait indent graunt parcell del poſſeſſions de ſon Prebend al Roy H.8. ſes heires & ſucceſſors, et coment que le fait fuit inrolle, et que le graunt fuit fait ſans aſſent del Eueſq, Deane & Chapter, que vncore le dit graunt fuit adiudge bone, pur ceo que le Prebendarie fuit expreſſement noſme in fact. 2. Si graunt adēe fait al Roigne de incident inſeparable, come dun founderſhip, ou del dits ſeruices del donee in taile, fact de** 18. Eliz. **ne vnques ferra tiel graunt bone, p̄ ceo que tiels choſes ne ſont grauntable. 3. Si teñ in taile p fait graunt ſon terre al Roigne, tiel graunt eſt fait bone vers liſſue in taile per le dit act de** 18. Eliz. **car le perſon del tenant in taile eſt able, et il ad power ſur le terre, et iſſint fuit tenus in le dit caſe de** Vaughan: **Mes ſi baron et feme per fait graunt la terre la feme al Roigne, ceo neſt fait bone per le dit act a lyer la feme apres le couerture, ou ſes heires, car la perſon del feme couert eſt diſable a conueier ſon terre ſinon per fine ſur due examination, et iſſint auxy fuit tenus in le caſe de** Vaughan. **4. Quant le manner et compoſition del fait eſt voyde in ley, come in le caſe que ad eſte miſe, ſi home ſeiſie des terres in fee per fait pur bone conſideration graunt la terre apres ſon mort al Roigne ſes Heires & Succeſſors, tiel graunt neſt pas fait bone per le generall parols del act de** 18. Eliza. **et oue ceo accord** 38. Hen. 6. fol. 33. Labbeſſe de Sions caſe, & le Countee de Leiceſters caſe, Plow. Comment' 400. &c. **pluis fort caſe que ceo eſt,** Quæ malo ſunt inchoata principio, vix eſt vt bono peragantur exitu. Vide 4. Ed. 4. 31. 12. H. 4. Formedon 15. **5. Quant le perſon eſt able & ad power ſur le terre, & le fait eſt bone et legall, mes fault circumſtance come inrolment ou ſemblable, la tiel fait eſt eſtablie, et tiel omiſſion ſupplie per le dit Acte de** 18. Elizab. **car fact fait le conueyance bone ſolonque le voyer entent et purport de ceo: Et in tiel caſe le purport del fait eſt aſſets ſufficient, coment que ceo ne fuit daſcun effect a paſſer le choſe.**

3. Le

3. Le dit act de 18.Eliz. poit auer aſeñ operation cõe ceſt caſe eſt ſur le graũt al Roigne, intant que le dit Doctor Kelke le Maiſter del dit Colledge fuit adonqs in vie, & lact ô 13.Eli. ad diſable les dits Maiſter & Fellows, qũt al ſucceſſors del dit Maiſter. Et ceſt point fuit iſſint conclude, quod vbi quid generaliter conceditur, ineſt hæc exceptio, ſinon aliquid ſit contra ius faſque. Et le dit act de 43.Eliz.cap.1. ad explane & expound ceſt act de 18.Eliz. come appiert deuãt. Et nota lecteur ſi lact de 18.Eliz. ferõ bone conueiances faits p plons diſable, ẽ ne ferõ effectuel eſtates faits deuant lact, mes donẽ liberty deinz 7. ans apz a faire eux, qõl leſtatute ne vnqs intend, car ſur ẽ grand pudice et miſchiefe enſuera.

¶ Quant al 3. generall point, fuit reſolue que le dit fine & non claime per 5. ans ne barreõ le droit del dit Colledge, pur deux cauſes. 1. Les pols ôel act de 13.Eliz. ſont, That all leaſes, gifts. &c. conueiances and ſtates, had, made, done, or ſuffered, by any Maiſter and Fellowes &c. Iſſint que in le caſe al barre eſt vn conueiance et ſtate permitted or ſuffered by the Maiſter and Fellowes of the ſaid Colledge, & q̃ ceux parols ne ſerra extend ſolement quaint le Maiſter & Fellowes ſuffer vn recouery &c. vers eux meſme, come pty a ceo, mes generalmẽt ſolonqz le lre qũt ilz ſuffer auqs a leuier fine oue proclamation, & ſuffer auxi 5. ans a paſſer ſans claime, et coment que le concluſion del puruieu del act eſt ſhall bee vtterly voide and of none effect to all intents, conſtructions, and purpoſes, vncoze p conſtruction ſerra iſſint prile que le dit fine leuie oue proclamations &c. ſerõ voide & de nul effect a lier le droit de Maiſter & Fellowes del dit meſe: et ſerõ de nul effect dauer phibite eux a barrer le droit de lour Colledge p conueiances faits p le Maiſter & Fellowes meſme, & a layſer eux power p lour permiſſion ou ſufferance et non claime a barrer ceo, & a ceſt purpoſe ceux parols permitted or ſuffered fueront adde. Le 2. reaſon fuit, q̃ intant le dit ſtate cõuey al Roigñ Eliz. fuit de force durant le vie de Doctor Kelke adonques Maiſter, & q̃ il fuit in vie al temps del fine leuy, & touts les proclamations paſſe in ſon temps, iſſint q̃ nul puit auer fait entrie ou claime durant ſon vie, et que Doctor Gooch deins v. ans apres ſon mort enter in le dit meſe in claiment ceo dẽe le droit de luy & des Fellowes del dit Colledge, a ceux cauſes auxy fuit reſolue, q̃ ceſt entrie ad auoid le fine. Vide 19.H.8.fol.6. Stowels caſe Pl. Com. 374. 376. Croſt & Howels caſe Pl. Com. 538.

¶ Quant

¶ Quant al 4. general point, ceo ne fuit penſe digne aſcun queſtion, car intaunt que le dit corps politique in ceſt caſe eſt corps aggregate de pluſors, le Maiſter ſolement ne poet per ſon acceptance deuerſter aſcun droit ou intereſt que eſt in luy & ſes Fellowes, ou concluder luy (principalment ẽ eſteant ſans fait) dentre in le dit meſe, Vide 7. H. 7. 9. 9. E. 3. 39. 18 E. 4. 8. Pl' Com' 91. &c.

Et accordant a ceux reſolutions Judgement fuit done qd querens nihil caperet per billam.

Paſchæ 13. Iacobi Regis.

Lewis Bowles̄ caſe.

LEwis Bowles aꝑ poꝛt action ſur le caſe ſur trouer vs Haſeldine Bury le puiſn̄, que commence in banke le Roy Hill. 10. Iac. Regis, Rot. 1319. et counte que il fuit poſſeſſe de 30. cart-loads de maereſme et eux perd̄, et q̄ eux deueigne al maines del def. & que il 20. Febr' an. 9. Iac. Reg. al Noꝛton in le County de Hertf. conuert eux a ſon oeps, & ſur riens culp̄ plead les Juroꝛs done vn ſpeciall verdit a ceſt effect. Thomas Bowles aī aiel del dit Lewis, fuit ſeiſie del mannoꝛ de Noꝛtonbury in le dit countie in fee, et primo Septemb. anno 12. per Indenture inter luy de lun part & William Hide & Leonard Hide del auter part, in conſide-ration dun mariage dēe ewe int̄ le dit Thomas Bowles et Anne file del dit William Hide &c. couenant, que aps le dit mariage ewe et ſolēnize, q̄ le dit Thom̄ ſes heirs & aſſigns eſtoient ſeiſie del dit mannoꝛ de Noꝛton al vſe del dit Thom̄ & Anne p̄ terme de lour vies ſans impeachm̄t de waſt, & aꝑs lour deceaſes al oeps de lour pꝛimer iſſue male & a les hēs males de tiel iſſue loialm̄t iſſuants, & iſſint ouſter a lour 2, 3, & 4. iſſue male &c. & p̄ defalt de tiel iſſue al vſe des hēs male & del coꝛps del dit Thom̄ & Anne loialm̄t ingēdꝛs, & p̄ defalt de tiel iſſue, al vſe de Thom̄ Bowles fitz & hē apparant de Thom̄ Bowles laiel & les hēs males de ſon coꝛps iſſuant, & p̄ default de tiel iſſue al vſe del hēs del coꝛps del dit Tho. & Anne loialm̄t iſſuāts, q̄l mariage fuit ſolēnize accoꝛdant, & les dits Thomas laiel & Anne auoient iſſue John, & puis le

le dit Thomas laiel mozuſt ſans aſcun iſſue del cozps del Anne forſque le dit John, puis quel mozt le dit Anne enter in le dit manoz et fuit ent ſeiſi oue les dits reñ ouſter come eſt auantdit, et puis le dit John Bowles mozuſt, et puis Thomas Bowles le fitz conuey per fine ſon reñ al vſe de Lewis Bowles le defendant et Diana ſa feme & les heirs males de ſon cozps: Et le dit Anne iſſint ẽeant del dit manoz ſeiſi oue les reñ ouſter come eſt auantdit, viz. 20. Febr. an' Regni Iacobi Regis 9. vn barne parcel del dit mañ per vim ventorũ & tempeſtat' penitus ſubuerſ. & ad terr' deiect. fuit, & que les dits 30. cart loads del maereſme in le count mentiõ fuit pcel del dit barne, et q̃ le dit maereſm fuit ſoliũ & apt p̃ building, p q̃ le dit def. cõe ſeruant le dit Anne & p̃s cõmandm̃t pꝛiſt le dit maereſme & carry ẽ hoꝛs des limits del dit mañ al Radial in m̃ le County, et puis le dit Anne 24. Febr. an' 9. Iac. Regis fiſt ſon darrein volunt et ent fiſt Robert Oſborne & Leonard Hide Chkres ſes executoꝛs & mozuſt, puis quel mozt le pl̃ ſeiſi le dit maereſme, & puis le def. per commandment des dits executoꝛs conuert ceo a ſon oeps. Et ſi ſur tout le matter le defendant fuit culp̃ ou nemy, les Juroꝛs pꝛiont le diſcretion del Court.

Et in ceſt caſe 2. queſtions fuer̃ moue. 1. Si ſur tout le matt̃ le feme ſerr̃ teñ in taile aps poſſibilitie, ou q̃ el auera l' pꝛiuiledge dũ teñ in taile aps poſſibility, s. a fait̃ waſt &c. 2. Admittãt que el naña le pꝛiuiledge &c. ſi le clauſe de ſans impeachm̃t de waſt done a luy pꝛoperty in le timber iſſint pꝛoſtrate per le vent.

Et in ceſt caſe 8. points fuer̃ reſolue p le court. ¶ 1. Que tãq̃ iſſue Thom̃ laiel & Anne fuek ſeiſi dun eſtate taile executed ſub modo, s. tãq̃ le neſtre de iſſue male, & dõq̃s p opatiõ del ley leſtates ſont deuide, s. Tho. & Anne deueigñ teñ p lour vies, le reñ al iſſue male in taile, le reſid̃ al hr̃s males de Thom̃ & Anne, le reñ ouſter cõe eſt auantdit, car leſtate p lour vies nẽ pas abſoluteñt merge, mes oue cẽ imply limitation tãq̃ ilz ont iſſue male. Vide in le primer part de mes Cõmentaries Chudleighs caſe fol. 120. & Archers caſe fol. 66. b. ¶ 2. Que teñ in taile aps poſſibility ad greind̃ pheminẽte & pꝛiuiledge in reſpect de qualitie d ſon eſtate, q̃ teñ p vie, mes el nad griẽder quãtity deſtate q̃ l' p vie. In reſpect dl qualitie de ſon eſtate, ceo taſt mult del qualitie del eſtate taile, hoꝛs de quel ceo eſt deriue, et pur ceo, pꝛimerñt, el ne ſerr̃ punie pur waſt. 2. El ne ſerr̃ chaſe dattoꝛner. 3. El naña aide.

aide. 4. Sur son alienation nul Consimili casu gist. 5. Apres son mort nul dē de Intrusion gist. 6. El poit ioiner le mise in briefe de droit in special maner, Temps E. 1. Wast 125. 39. E. 3. 16. 31. E. 3. Aid 35. 43. E. 3. 1. 45. E. 3. 22. 46. E. 3. 13. 27. 11. H. 4. 15. 7. H. 4. 10. 2. H. 4. 17. 42. E. 3. 22. 3. E. 4. 11. 21. H. 6. 56. 10. H. 6. 1. 13. E. 2. Entre congeable 56. 28. E. 3. 96. 26. H 6. tit' Aid 77. F. N. B. 203. 7. In action port per luy el ne nosmera luy m̄ t̄ pur vie. 18. E. 3. 27. feme port Cui in vita, quod clamat tenere ad vitam, & maintaine c̄ in son count p̄ done in speciall taile a luy & a s̄ baron, & q̄ son baron est mort sans issue, & t̄ briefe p̄ contrariosītie del title abate. 8. In action port ꝟs luy ne serē nosme t̄ pur vie, s. Quod tenet ad terminum vitæ. Mich. 39. & 40. El. Rot' 3316. in communi banco, inter Veale & alios quer' & Read def. in Quid iuris clamat, et le note del fine suppose que le def. tenet ad terminū vitæ; le def. demand oyer del briefe & note del fine & auoit; le defendaunt plead que il fuit seisi in fee, Absque hoc quod iour del note leuie tenuit pro termino vitæ, & les Iurors troue que il tient cōe ten̄ in taile aps possibility dissue extinct, & fuit adiudge pro defendente, car t̄ in taile aps possibility ne ſt̄ in iugemt del ley include in briefe ou fine &c. deins le general allegation dun ten̄ pur vie. Vide 19. E. 3. 1. b.

Mes quant al quantity il nad forsque estate pur vie, et pur ceo sil fait feoffement in fee, ceo est vn forfeiture de son estate, 13. E. 2. tit' Entre Cong', 56. 45 E. 3. 22. 28. E. 3. 96. b. 27. Ass. pl. 60. F. N. B. 159. issint si fee ou fee taile general discend ou remaine al t̄ in taile aprez possibility &c. le fee ou estate taile est execute, 32. E. 3. tit' Age 55. 50. E. 3. 4. 9. E. 4. 17. Et per lestatute de W. 2. cesty in reūsion serē resceiue sur son defalt, 2. E. 2. Resceit 147. 41. E. 3. 12. 20. E. 3. tit' Resceit 38. E. 3. 33. Vi. 28. E. 3. 96. 39. E. 3. 16. Et eschange int̄ ten̄ pur vie & ten̄ in taile aprez possibility est bone, car estates equal.

¶ 3. Fuit resolue, que lestate dun ten̄ in taile aprez possibility couient estre vn remaine & residue dun estate taile, & ceo per act de dieu & nemy per limitation del party, ex dispositione legis, & nemy ex prouisione hominis; et pur ceo, si home fait done in taile sur condition que sil fait tiel act que il nauera forsque pur vie, il nest pas ten̄ in taile aprez possibily dissue extinct, car ceo est ex prouisione hominis, & nemy ex dispositione legis, mes couient ēe le remain & residue dun estate taile & ceo per act de dieu & ley, cestasçauoir, per le mort del vn donee sans issue, Litt' fo 6. b. Doct' & Stud. li. 2. c. 1. fol. 61.

2. H. 4.

2.H.4.17. 26.H.6.tit' Aid 77. ſi tenants in ſpecial taile recou in aſſile, & puis lun mozuſt ſans iſſue, & puis ceſty q̄ ſuruiue (q̄ eſt tenāt in taile aꝑs poſſibility) eſt rediſſeiſi, il aūa rediſſeiſin, car in le franktenemēt q̄ il auoit deuant, car c̄ eſt parcel del eſtate taile: & p̄ c̄ q̄ la feme in le caſe al bark̄ auoit leſtate pur vie per limitation del party, & leſtate que el ad in le reñ, s. del teñ in taile aꝑs poſſibility, ne fuit larger eſtak̄ in quātity, et pur ceo ne poet merger leſtate pur vie, come ad ẽe dit deuaunt, a ceſt cauſe la feme ne fuit pas teñ in taile aꝑes poſſibility.

¶ 4. Fuit reſolue, que in ceſt caſe la feme auera le pꝛiuiledge del teñ in taile aꝑs poſſibility p̄ le inheritance que fuit vn foitz in luy, car oꝛe quant John liſſue male eſt moꝛt, le pꝛiuiledge q̄ el ad in reſpect del inheritāce q̄ fuit in luy in reñ ne ſerk̄ perde: & neſt queſtion mes que feme puit ẽe teñ in taile aꝑs poſſibility dun reñ cibñ come dun poſſibility, & pur c̄ ſi leaſe p̄ vie ſoit fait, le reñ al baron & feme in ſpeciall taile, le baron moꝛuſt ſans iſſue, oꝛe eſt la feme teñ in taile aꝑs poſſibility de ceſt reñ, & ſi le teñ pur vie ſurrender a luy cõe il poit (car la vie de ceſty in reñ eſt pluis haut q̄ auk vie) oꝛe eſt el teñ in taile aꝑes poſſibility in poſſeſſion: & ſemble a ceſt caſe, ſi le pier ſoit enfeoffe a luy & a ſes heires oue garr̄, et le pier enfeffe le fitz &c. & moꝛuſt, in ceſt caſe le fitz, coment que il ad la terre per purchaſe, vncoꝛe il pꝛendꝛa le beneſit del garr̄ come heire, car il ne poit vouche come aſſignee, & le garr̄ inter le pier & luy eſt perdue, come eſt adiudge in 43.E.3.23. Iſſint iey coment que le feme ne poet clamer leſtate de tenant in taile aꝑes poſſibility, vncoꝛe il poet clamer le Pꝛiuiledge et beneſit de ceo. Et fuit obſerue, que teñ in ſpeciall taile al common ley auoyt limited fee ſimple, et quant lour eſtate fuit change per leſtatute de donis condicional', vncoꝛe la ne fuit aſcun change de lour intereſt in feſant de Waſt: iſſint quant per le moꝛt de lun donee ſauns iſſue leſtate eſt chaunge, vncoꝛe le power a faire Waſt & a conuerter ceo a ſon oeps demeſne neſt pas alter ne change pur le inheritance que fuit vn foits in luy. Vide Hill.2.Iacobi, Rot.1o 229 inter Brooke & Rogers in communi banco, ſi arboꝛ de maereſme deueign arida, ſicca, nõ portans fructus nec folio in ætate, nec exiſtens maeremium, vncoꝛe pur ceo que c̄ fuit vn foits vn inheritance &c. nul diſmes ꝓ̄ pay p̄ ceo, iſſint que le quality remain coñt q̄ leſtate del arbꝛe eſt alter.

¶ 5. Que si teñ pur vie ou pur ans succide timber, ou prostrate les measons, le lesso̲r auera le timber, & pur ceo q̄ ceest point fuit resolue in ceest Court sur solemne argumēt in Lyfords case, le darreine terme de Saint Michael, quel Vide deuant in ceest liure, ieo voille fait̄ le pluis summary report. 1. Est apparant in reason, que le lessee nauoit eux fo̲rsque come choses annexe al soile, & pur ceo serr̄ absurd in reason que quant per son act & to̲rt il seis̄ eux del terre, que il gainera greinder property in eux que il ad per demise. 2. Est sans question (come est resolue in le dit case) que le lesso̲r in les measons & in les arbres de maerisme ad le generall owners̄hip & droit et inheritance, & le lessee nad fo̲rsq̄ particuler interest, et pur ces soit eux prostrates ou succide per le lessee ou ascun auter, ou per le vent ou tēpest subuert, ou per auter meane disanner del inheritance, le lesso̲r eux auera in respect de son general owners̄hip, & p̄ ceo q̄ eux fuer̄ son inheritance; & quant a ceo les resolutions in Herlakendens case in le 4. part de mes Reports fol 63. fuer̄ affirme pur bone ley, & Pagets case in le 5. part de mes Reports fol. 76. b. car coment que il ne poet punier eux in action de wast al common ley pur ceo que fuit son act demesne, & in s̄ lease il nad fait prouis̄ion per couenaunt ou condition, vncore lenheritance & geneall owners̄hip remaine in le lesso̲r, et le lessee (come ad ēe dit) nad que speciall interest in les measons et arbres de maerisme cy long come ils sont annex̄ al terre: & ceo appiert per lestatut de Marlebridge cap. 23. Item firmarij vastum &c. non facient, nisi specialem inde habuerint concessionem per scriptum conuencionis, mentionem faciens qd hoc facere possint; per que appiert que les lessees pur vie ou ans q̄ adonq̄s fuer̄, ne poient droiturelment succide les arbres ou prostrate les measons sinon que le lesso̲r ad graunt per fait a ceo faire: In que fuit auxy obserue q̄ al temps del feasans de mesme lact, le dit clause de saums impeachment de wast fuit in vse, quel proue que ceo fuit a tiel purpose que l'lessee poet faire wast & disposer ceo a son oeps demesne, q̄l il ne poet faire sans tiel clause. 3. Chescun lessee pur vie & ans doit per la ley a faire fealty sur son serement, & serr̄ enconter son seren̄t a degaster ses measons & arbres de maeresme. Et nota Lecteur sur ceest act de Marlebridge gist prohibition de wast vers le lessee p̄ vie, & lessee pur ans, a prohibiter eux q̄ ilz ne ferr̄ wast deuant ascun wast fait come fuit vers teñ in dower, & tenant p̄ le curtesie al common ley.

Vide

Vide Bracton 316. iudgement in waſt al common ley, Teñ in dower ou per le curteſie, ount cy haut eſtate come leſſee pur vie, & appiert q̄ ne fuit loyall al teñ per le curteſie ou in dower a faire waſt, ergo nient pluis teñ pur vie: le ſole differences fuit, que prohibition de waſt gist vs teñ in dower & per le curteſie al common ley, & nemy vers leſſees tanque le dit ſtatute de Marlebridge. Et a prouer q̄l intereſt le leſſee pur vie ad in les arbres al common ley, appiert per Bracton (que eſcrie deuant leſtatute de Gloc') lib. 4. tract' de aſſiſa nouæ diſſ. cap. 4. fol. 217. Si quis vaſtum fecerit, vel deſtructionem in tenemento quod tenet ad vitã ſuam, in eo quod modum excedit, & rationem, cum tantum conceditur ei rationabili eſtoũiũ, facit tranſgreſſionem, & ſi talis impediatur, ille tenens aſſiſam non habebit, intentio talis liberabit a diſſeiſina, quia in eo quod tenens abutitur male vtendo, & debitum vſum & modum debitum excedendo, non poteſt dicere quod diſſeiſitus eſt quia tantum rationabilis vſus ei conceditur. Quel proue directment, que fuit tort in le leſſee pur vie a faire waſt ou diſtruction al common ley. Et fuit reſolue ſi aſcun meaſon eſchie per vim venti in le temps del tiel leſſee pur vie ou pur ans, ou in temps dl teñ in dower, ou teñ p le curteſie &c. que tiels particuler tenants ount vn ſpeciall property in le timber a reedifier vn autiel meaſon come le auter fuit pur ſon habitation; come fils ſuccidont arbre pur reparation, ilz ont ſpecial property a cẽ ppoſe in ẽ, & oue ẽ accord 44. E. 3. 5. & 44. E. 3. 44. & 29. E. 3. 3. & 10. E. 4. 3. Mes les dits ptĩcular tenants ne poent doñ ou vend le maeriſme iſſint ſuccide, car le general ꝓperty eſt in le leſſor; & p̄ ẽ Litt' fol. 15. tient q̄ ſi ieo baile biens al auter a compeſter ſon terr̃, ore il ad ſpecial ꝓperty in eux a cẽ purpoſe, in ceſt caſe ſi il occide eux, general act̃ de trñs gist vers luy. Vide 11. H. 4. 17. & 23.

¶ 6. Le preheminence & priuiledge que le ley done aux meaſons q̄ux ſont pur habitation des homes fuit obſerue. Primerment vn meſe doit auer le propertie & precedencie in vn Præcipe quod reddat, deuãt tres, pree, paſture, bois, &c. F. N. B. 2. &c. car ſon meaſon eſt ſõ caſtle & domus ſua eſt vnicuique tutiſſimũ refugiũ. 2. Le meſe dun home ad priuiledge a protecter luy enconter larreſt per force del proces del ley al ſuit dũ ſubiect, Vide Semaines caſe in le 5. part de mes Reports fol. 90 3. Priuiledges inconter le prerogatiue le Roy, car fuit reſolue p touts lez Juſtices M. 4. Iac. que ceux que fodẽt pur Salt peter, ne fodẽt in le Manſion houſe dalcũ ſubiect ſanz

sans son assent, car donqs il ou sa feme ou infants ne poet ẽe in saletie in le nuit, ne ses biens in son mese pserue de larons & auters misfesors. 4. Cestuy que tua vn se defendendo, ou laron que voille luy robbe sur le haut voy, per le common ley forfeitẽ ses biens, mes cesty que tua vn que voille robber & spoiler luy in son meason forfeitera ryens, 3.E.3.Corone 230.& 26.ass.23.5. Si 2. iointen̄ son dñi boys ou de arrable terre, lun nad remedy vers lauter a faire inclosure ou reparations pur safegard del boys ou Corone, mes si 2. ioint sont dun mese, lun auera briefe de reparatione fac', vers lauter, & les parols del briefe sont ad reparationem & sustentationem eiusdem domus tenetur, Fitz.N.B.127.a. 6. Si home soit in son meason & oyet que auters voillent bener a son meason de luy bater, il bien poit faire assemble ō ses amies &c. in son meason de luy aider in sauegard de son person, car come ad estr̄ dit le meason dun home est son Castle & son defence, et lou il pproperment doit demurrer, mez si home soit menace sil vient a tiel Faire ou Market q̄ il serr̄ batue, in cest case il ne poet faire tiel assemble, mes il doit ass remedie per suretie del peace 21.H.7.39.b.

¶ 7. Le clause de sans impeachm̄t de wast done power al lessee q̄ pduceth̄ vn interest a luy sil execute son power durant le priuity de son estate: et pur ceo a examiner ceo in reason. 1. Ceux parols absque impetitione vasti, sont tant a dire come sans ascun demaund p̄ wast, car impetitio est deriue de in & peto, & petere est a demaunder, & petitio est vn demande, & sine impetitione est sans ascun maner de demaunde ou impeachment, donques cest parol (demaund) est dun large extent, car si home disseisie moy de mon terre ou priist mes biens, si ieo releale a luy touts actions, vncore ieo poy enter in la terre ou seisi mes biens, come Littleton tient fol. 115. & oue ceo accord 19.Ass.p.3. 19.Hen.6.4.b. 21.H.7.23. 30.E.3.19. car per le releale del actiō le droit ou interest nest releale, mes si in tiel case ieo releas touts demaunds, ceo excludera moy non solement de mon acc̄ mes auxy de mon entre & seiser, & del droit de mon terre, & pptie in mes chattels, come fuit resolue in Chaunceys case an.34.H.8.tit. Releas Br.90. 2.H.7.6. le Roy fait vn vicont sine compoto, per ceo il auera les reuenues que appent a son office a collector a son oeps. Mes si les polz vsont ẽe absque impetitione vasti per aliquod breue de vasto, donqs lactiō solement serr̄ discharge, & nemy le property in les arbres, mes que le lessor apres le

succeder

succider de eux poiet eux seiser: ꝛ ceest diuersity appiert in 3. E.3.44. in Walter Idles case, ou lease fuit fait sãs estr̃ impeach ou implead p̃ Wast, sur que fuit collect que ceux parols (sãz este impleade) sauns ceux parols (sauns este impeach pur Wast) fuer̃ nient sufficient a barrer le lessour de son pro-pertie, ꝛ que si le lessor vst grãt que le lessee poet faire Wast, il per ceo ad power non soiement a faire Wast, mes auxy a conuerter ceo a son oeps, et ceo proue les parols del dyt act de Marlebridge et lestatute de prærogatiua regis capit. 16. ou est dit que le Roy auera annum, diem, et vastum, cestascauoire, que est tant a dire, que il auera les arbres ꝛc. a son dispolition.

2. Fuit dit, que le continual ꝛ constant opinion de touts ages fuit, q̃ ceux parols donont power a lessee al faire wast a son oeps demesne, ꝛ serr̃ dangerous ore a receder de ceo: ꝛ come est dit in 38.E.3.1. per les Judges (illint nous dismus in cest case) nous ne voillomus chaunger le ley que toutes foits ad este vse, ꝛ est bien dit in 2.H.4.18. Est melieur q̃ serr̃ default, que la ley serr̃ change: Et lopinion de *Wray* chiefe Justice ꝛ *Manwood* cite in Herlakendens case, ne fuit iudicial, mes prima facie sur vn arbitrament sans aslum argument, ꝛ peraduent̃ sur le vieu de 27.H.6.tit' Waste 8. ꝛ pur ceo coment que le chiefe Justice argue in cest case enconter lour opini-ons, vncore ĩ fuit oue grand reuerence a eux, disãt oue Aristotle in sẽblable case, Amicus Plato, amicus Socrates, sed magis amica veritas: ꝛ Qui non libere veritatem pronunciat, proditor veritas est. Et le veritie de cest case appiert per Litt' in son Chapter de conditions fol. 82. ou il mist cest case: Si feoffm̃ soit fait sur tiel condition, que le feoffee donera la terre al feoffor ꝛ al feme del feoffor, a auer ꝛ tener a eux ꝛ a les hr̃s de lour 2. corps engendres, le remainder al droit heires del feffor, in cest cas si le baron deuy, viuant la feme, deuant as-cun estate in la taile fait a eux, donques doit le feoffee per la ley faire estate al feme cy pres le condition ꝛ cy pres lentẽt del condition que il poit faire, cestascauoir, a lesser la terre al feme pur term̃ de sa vie sans impeachmẽt de Wast, le re-mainder a les heirs del corps son baron de luy ingendres, le rem̃ al droit heires le baron, ꝛ le cause pur ceo que le lease serr̃ fait in cest case al feme sans impeachment de Wast, est (come Litt' la dit) pur ceo que le condition est, que le-state serr̃ fait al baron et sa feme in tail, ꝛ si tiel estate vst ẽe

fait

fait in la vie le baron, donques apres la mort del baron el vst ewe estate in taile, quel estate est sans impeachment de wast, et issint il est reason que cy pres que home poit faire estate al intent del condition que il serr̄ fait, quel case directment iproue, que teñ pur vie sauns impeachment de wast ad cy grand power a faire wast & a conuerter ceo a son pleasure, come teñ in taile auoit. Que ceux parols, sans impeachment de wast, sont sufficient parols a doner al teñ pur vie tiel power, Vide 2. H. 4. 5. & le Seignior Cromwels case in le 2. part de mes Reports fol. 81. 82. & pur cest clause de sans impeachment de wast 3. E. 3. 44. 8. E. 3. 34, 35. 24. E. 3. 32. 43. E. 3. 5. 5. H. 5. 8. 27. H. 6. tit' Wast 8. 4. E. 4. 36. 20. H. 7. 10. 28. H. 8. Dier 10. & issit le Quære in le dit liur̄ de 27. H. 6. bie resolue: & vide lopinion de Statham in abbridgeant le dit liure encõter ceo.

Mes le dit priuiledge de sans impeachment de wast, est annex al priuitie del estate 3. E. 3. 44. per Shard & Stone: Si vn que ad particular estate sauns impeachment de wast change son estate, il perde son aduantage 5. H. 5. 9. a. Si hõe fait lease pur ans sans impeachm̄t de wast & puis il confirme la terre a luy pur sa vie, ore il serr̄ charge de wast: 28. H. 8. Dyer 10. b. Si lease soit fait al vn pur terme dauter vie saunz impeachment de wast, le remainder a luy pur terme de son vie demesne, ore il est punishable de wast car l primer estate est ale & drowne, issint dun confirmatiõ. Fuit adiudge in le case de Ewens Mich. 28. & 29. Eli. que ou teñ in taile apres possibility dissue extinct grant ouster son estate, que grantee fuit chase in Quid iuris clamat dattorner, car per lassignement tiel priuiledge est perdue, & cest Judgement fuit affirme in banke le roy in briefe de Error, & oue ceo accord 27. H. 6. tit. Aid in Statham: Vide 29. E. 3. 1. b. Le heire al Common ley aueroit prohibition de wast vs teñ in dower, mes si le heire grant ouster le reuersion son grantee nauera prohibition de wast, car appiert in le Register fol. 72. que tiel assignee in action de wast vers teñ in dower reciter lestatute de Glouc', ergo il nauera prohibition de wast al common ley, car donqs il ne reciter lestat. Vide F. N. B. 55. 14. H. 4. 3. 5. H. 7. 17. b.

Barreinment fuit resolue, que le dit feme per force del dit clause de sans impeachment de wast, ad tiel power et priuiledge, que coment que in le case al barre nul wast soit fait,

fait, pur ceo que le meason fuit ſubuert per vim venti, ſans default in luy, uncore el auera le maereſme que fuit parcel del meason, & auxy arbres de maereſme que ſont proſtate oue le vent, & quant ils ſont ſeuer del inheritance ou per act del party, ou del ley, & deueigne chattell, lentier ꝑpertie de eux eſt in le dit teñ pur vie, per force del dit clauſe de ſauns impeachment de waſt: Et a ceſt cauſe iudgement fuit done per omnes Iuſticiarios vna voce, Quod querens nihil caperet per billam.

Trin.

Trin. 44. Eliz.

Le case de Monopolies.

EDward Darcy Ar. (vn Groome del priuy Chamber del Roign Elizab.) port action sur le case vers Thomas Allein Haberdasher de Londres, & count q̃ le Roigne Elizab. 13. Iunij anno 30. Eliza. intendant que les subiects esteant ables homes de exerciser husbandry, applier̃ ceo, & q̃ ils ne imploier̃ eux mesme al fesans de playing Cardes, que nad ẽe alcun ancient manuel occupation deins cest realme, & que per le fesans de tiel multitude de Cards, Card playing fuit deuenus pluis frequent, & principalment inter seruants & apprentices & poures artificers: et au fine que ses subiects applier̃ eux mesm a plus loyal et necessary trades, per les letters patents delouth le grand seale de mesme le date grant a Raphe Bowes ar̃ pleine power, licence & authoritie per luy mesme, ses seruants, factors, & deputies, de prouider & achater in alcuns parts ouster le mere touts tiels playing Cards, come il semble bone, et pur importer eux deins le realme, et de vender et vtter eux deins ceo, & que il, ses Seruants, Factors, & Deputies, aueront & inioyer̃ tout le Trade, Traffique, et Merchandise de toutes playing Cardes: et per mesme les letters patents ouster grant,

graunt, que le dit Raphe Bowes, ſes ſeruants, factors, et deputies, & nuls auters, aueront le confection de playing Cards deins le Realme, a auer et tener pur xij. ans. Et per meſme les Letters Patents le Roigne charge et commaunde, que nul perſon ou perſons preter le dit Ralphe Bowes &c. porter aſcun Cards deins le Realme duraunt ceux xij. ans, ne achater, vender, ou offer dẽe vend deins le dit terme aſcun playing Cards deins le Realme, ne ferr ou cauſe deſtre fait aſcun playing Cards deins le Realme, ſur paine del grieuous indignation del Roigne, et de tiel fine et punißment come Offendors in caſe de voluntary contempt deſerue. Et puis le dit Roigne 11. Aug. anno 40. Eliz. p ſes Letters Patents, recitant les former graunts faits al Raphe Bowes, granta al plaintife ſes executors & Adminiſtrators et lour Deputies &c. meſme les priuiledges, authorities, et auters les dits premiſſes pur xxj. ans, puis le fine del primer terme, rendant al Roigne 100. marks per annum: Et ouster graunt a luy vn Seale pur marker les Cards: Et count ouster, que puis le fine del dit terme de xij. ans, ceſtaſcauoir, 30. Iunij Anno 42. Eliz. le plaintife cauſe dẽe fait 400. groſſes de Cardes p le neceſſary vſes des ſubiects, dẽe vend deins ceſt Realme, et ad expend in le ſeaſans de eux 5000. li. et que le defendant ſachant del grant & prohibition in lez letters Patents le pl, et auters les premiſſes, 15. Martij. anno 44. Eliz. ſans licence le Roigne ou del plaintife &c. al meſm cauſe dẽe fait 80. groſſes des playing Cards, et cibien eux come 100. auters groſſes des playing Cards, de queux nulz fuer faits deins le Realme, ou import deins le Realme per le plaintife ou ſes ſeruants, factors, ou deputies &c. ne marked oue ſon ſeale, il ad import deins le Realme, et eux ad vendue et vtter al diuers perſons diſconus, & monſtre aſcuns in certeine, per que le plaintife ne poit vtter ſes playing Cards &c. Contra formam prædictarum literarum patentium, & in contemptum dictæ Dominæ Reginæ, per que le plaintife fuit diſable a payer ſon ferme, & al dammages le plaintife. Le defendant preter a vn dit groſſe plead non culpable, et quant a ceo pleade, que le Citie de Loundres eſt auncient Citie, et que deins ceo, de temps dont &c. ad eſtre vn ſocietie de Haberdaſhers, et que deins le dit Citie fuit vn cuſtome, Quod quælibet perſona de ſocietate illa, vſus fuit & conſueuit emere, vendere, &

liberè merchandizare omnẽ rem & omnes res Merchandizabiles infra hoc Regnum Angliæ de quocunque vel quibuscunque personis &c. & plead q̃ il fuit ciuis & liber homo de ciuitate & societate illa, & vendõ le dit õi grosse de playing Cards, esteãt faits deins ceste Realme &c. come bien a luy list: & sur ceo le pl̃ demurre in ley.

Et ceste case fuit argue al barre p *Doderidge, Fuller, Fleming*, Solicitor, & *Cooke* Atturny generall, del part del plaintife, & per *Croke, G. Altham*, & *Tanfield* del part del defendant. Et in ceste case 2. generall questions fuer̃ moue & argue al barre, surdont sur le 2. distinct grants in lez ditz letters patents. cestascauoir. 1. Si le dit graunt al plaintife del sole feasance des Cardes deins le Realme, fuit bone ou nemy. 2. Si le Licence ou dispensation dauer le sole importation de forreine Cards graunt al plaintife, fuit auaileable in ley ou nemy. A le barre nul regard fuit eue, pur ceo que ceo ne fuit pluis que le common ley voille auer dit, & donques nul tiel particular custome duist auer este alledge, car In his quæ de iure communi omnibus conceduntur, consuetudo alicuius patriæ vel loci non est alleganda, Et oue ceo accord 8. Ed. 4. 5. &c. Et coment que le barre fuit tenus superfluous, vncore ceo ne turner̃ le defendant al ascun preiudice, mes que il bien poit prender aduantage del insufficiency del count.

Quant al primer question, fuit argue del part del pl̃, que le dit graunt del sole feasang des Cards deins le Realme, fuit bone p̃ iij. causes. 1. Pur ceo que les dits playing Cards ne fuer̃ ascun Merchandise ou chose concernaunt Trade dascun necessary vse, mes choses de vanity, & occasions de expence de temps, degasting des patrimonies, & substance des pluisors, le perde de seruice & oures des seruaunts, causes de want, que est le mere de woe et perdition, & pur ceo appent al Roigne (que est parens patriæ, & paterfamilias totius regni. & come est dit in 20. H. 7. fol. 4. capitalis Iusticiarius Angliæ) a toller le graund abuse, & a prender order pur le moderate et conuenient vse de eux. 2. In matters de recreation & pleasure le Roigne ad prerogatiue done a luy per le ley, a prender tiel order pur tiel moderate vse de eux come semble bone a luy. 3. Le Roigne in regard del grand abuse de eux, et del deceit fait per reason de eux a ses subiects, poit tout outerment suppresser eux, & per consequence

sequence sans iniury fait al alcun poit moderate et tolerate eux a son pleasure. Et le reason del ley q̄ done al Roy ceux prerogatiues in matters de recreation et pleasure suit, pur ē que le pluis greinder part des homes est, ppense a exceeder in eux: et sur ceux grounds diuers cases fuer̄ mise, cestascauoir, q̄ nul subiect poit faire Parke, Chase, ou Warren deinz son terre demesne p̄ son recreation ou pleasure, sans graunt ou licence le Roy, & sil fait ceo de son teste demesne, in vn Quo warranto ceux ser̄ seisie in les maines le Roy, come est tenus in 3. Ed. 2. tit. Action sur lestatute Br. 48. & 30. Ed. 3. Rot. Par. Le Roy granta a vn auter touts les wilde Cignes in̄ pont de Londres & Oxon̄.

Quant al 2. fuit argue & vrge fortment, que l'Roigne per son prerogatiue poit dispenser oue vn penall Ley, quant le forfeiture est popular, ou done al Roy, et le forfeiture done p̄ lestatute de 3. Ed. 4. cap. 5. in case de importance de Cards, est popular. 2. H. 7. 6. 11. H. 7. 11. 13. H. 7. 8. 2. R. 3. 12. Pl. Com. Greidons case 502. 6. Eliz. Dier 225. 13. Eliz. 393. 18. Eliz. 352. 33. H. 8. Dier 52. 11. H. 4. 76. 13. E. 3. Release 36. 43. Ass. pl. 19. 5. E. 3. 29. 2. E. 3. 6. 7. F. N. B. 211. b. *Questio 2*

¶ Quant al prim̄ fuit argue al cōtrary p̄ le Councel del def. & resolue p̄ *Popham* chiefe Justice & per totā Curiā, q̄ le dit grant al pl̄ del sole feasance des Cards deins l'Realme fuit tout ousterm̄t void, & ceo p̄ ij. causes. 1. Que ē est vn Monopoly, & enconr̄ le common Ley. 2. Que ceo est enconter diuers acts de Parliam̄t: Enconr̄ le common ley, pur 4. causes. 1. Touts Trades, cibien mechanicall, cōe aus q̄x auoidōt idlenes (le bane del weale publiq̄) & exercisont hōez & iunes in labour p̄ maintenance de eux, & lour families, & p̄ encreaser lour substance, a seruer le Roigne quaunt mistier ser̄, sont profitable p̄ le weale publique, et pur ceo le graunt al plaintife dauer le sole feasance de eux est encounter le Common Ley, et le benefite et libertie del subiect. Et oue ceo accord Fortescue in laudibus Legum Angliæ capitulo 26. Et vn case fuit adiudge in cest Court in action de Trespasse inter Dauenant & Hurdis, Trin' 41. Eliz. Rot. 92. Ou le case fuit, que le Companie de Merchant-taylors in Londres, eyant power per Chr̄e a fayre Ordinances pur le melieur regiment & gouernement del Company, issint que ils soyent consonant al ley et reason, feisoient vn Ordinance, que chescun frere de mesme le society, q̄ mitter̄ ascun pannes dēe dresſed p̄ ascū Clothworker nient esteant frere *Responsio ad 1 questio.* *Encounter Cōmon ley.*

de meſme le ſocietie, expoſer̃ le one halfe de ſes pannes al aſcun frere de meſme le ſociety, que exerciſe le art de Clothwoꝛking, ſur paine de forfeiture de x.s. ꝛc. & a diſtreiner pur ceo ꝛc. et fuit adiudge, que eeſt oꝛdinaunce, coment que ceo ad le countenance dun Chꝛ̃e, fuit encounter le common ley, p̃ ceo que ẽ fuit enconter le libertie del ſubiect; car cheſcun ſubiect per le ley ad freedome & liberty a mitter ſes pannes dẽe dꝛeſſed per quel Clothwoꝛker a luy pleiſt, et ne poit eſte reſtreine a certaine parſons, car ceo in effect ſerõ vn Monopoly, et pur ceo tiel oꝛdinance per colour dun Chꝛ̃e, ou aſcun graunt per Chꝛ̃e a tiel effect ſerõ voide. 2. Le ſole trade daſcũ mechanical Artifice, ou aſcun auter Monopolie, neſt ſolement vn damage et pꝛeiudice al eux que exerciſont in̄ le trade, mes auxi a touts auters des ſubiects; car le fine de touts ceux Monopolies eſt p̃ le pꝛiuat gain de Patentees: Et coñt q̃ puiſſons & cautions ſoient adde a moderat eux, vnũ res profecto ſtulta eſt nequitiæ modus, eſt mere folly a pẽſer que la eſt aſcun meaſure in miſchiefe ou wickednes: Et pur ẽ ſont 3. incidents inſeparable a cheſcũ Monopoly enconꝛ le weale publique, s. 1. Que le pꝛice de in̄ le cõmodity ſerra raiſe, car ceſty q̃ ad l' ſole vendition daſcun cõmodity poit & voet faire le pꝛice cõe a luy pleiſt: Et cẽ parol Monopolium dicitur ἀπὸ τοῦ μόνου & πωλεῖν quod eſt, cum vnus ſolus aliquod genus mercaturæ vniuerſum emit, pretiũ ad ſuum libitum ſtatuens. Et le Poet dit, Omnia Caſtor emit, ſic fit vt omnia vendat. Et appiert per le bꝛiefe de Ad quod damnũ F.N.B.222. que cheſcun done ou grant le Roy ad ceſt condition, ou expꝛeſſement ou tacite, annexe a ceo, ita quod patria per donationẽ illam magis ſolito non oneretur ſeu grauetur, Et pur ceo cheſcun graunt fait in gꝛieuance ou pꝛeiudice des ſubiects eſt voide: & 13. Hen.4.14. grant le Roy q̃ tend al charge & pꝛeiudice del ſubiect, eſt voide. Le 2. incident a vn Monopoly eſt, que apꝛes le Monopoly graunt le commodity neſt fait cy bone & merchantable, come ceo fuit deuant; car le Patentee ayant le ſole trade, regard̃ ſon pꝛiuate ſolement, & nemy le Weale publike. 3. Ceo tend̃ al depauperation de diuers artificers & auters, q̃x deuant per le labour de lour maines in lour arte ou trade auoient ſuſteine eux meſme et lour families, queux oꝛe ſerra de neceſſitie conſtreine a viuer in idleneſs, et beggary: Vide Forteſcue vbi ſupra: Et le Common Ley in ceſt poynt accoꝛde oue le equitie del Ley de Dieu, come appiert in Deuter' cap. 24. verſ. 6. Non accipies loco pignioris

pignoris inferiorem & ſuperiorem molam, quia animam ſuã apoſuit tibi, **bous ne prendẽ in pledge le nether & vpper Millſtone, car ceo eſt ſon vie, per que appiert, que le trade de cheſcun home maintaine ſon vie, et pur ceo il ne doit ẽe depriue ou diſpoſſeſſe de ceo nient pluis que de ſon vie: Et ceo auſi concurre oue le Ciuill ley:** *Apud Iuſtinianum enim legimus*, Monopolia non eſſe intromittenda, quoniam non ad commodum Reipublicæ ſed ad labem detrimentaque pertinent. *Monopolia interdixerunt leges Ciuiles cap. de Monopolijs lege vnica.* Zeno imperator ſtatuit, vt excercentes Monopolia bonis omnibus ſpoliarentur. *Adiecit Zeno.* Ipſa reſcripta imperialia non eſſe audienda, ſi cuiquã Monopolia concedant. 3. **Le Roigne fuit deceiue in ſon grant, car le Roigne, come per le preamble appiert, intenda ceo dẽe pur le Weale publike, & ceo ſerr̃ imploy pur le priuat del Patentee, et pur le preiudice del Weale publike: auxy le Roigne intenda que le abuſe ſerr̃ tolle, que ne vnques ſerra per ceſt Patent, mes** potiùs **le abuſe increaſe pur le priuate benefite del Patentee; et pur ceo, come eſt dit in** 21. E. 3. fol. 46. in le Countee de Kents caſe **ceſt graunt eſt voide** iure Regio.

4. **Ceſt graunt eſt** primæ impreſſionis, **car nul tiel fuit vnques vieu a paſſer per lr̃es patents deſouth le graund ſeale deuant ceux heures, & pur c̃ eſt vn daungerous innouation, cibien ſans alcun preſident ou example, come ſans authorizitie del ley ou reaſon. Et fuit obſerue, que ceſt graunt al pr̃ fuit p̃ xxj. ans, iſſint que les executors, adminiſtrators &c. femmes ou infants, ou auters, inexpert in le Art & Trade, aueront ceſt Monopoly. Et ne poit ẽe entend, que Edward Darcy vn Eſquire, et vn Groome del Priuy Chambre le Roigne, ad alcun ſkill in ceſt Mechanical trade de feaſant de Cards, et donques fuit dit que le Patent fait a luy fuit voide, car a phibiter auters a faire Cards que ount le art et ſkill, & a doner luy le ſole feaſance de eux, ou il nad ſkill a faire eux, ferra le Patent tout ouſterment voide.** Vide 9. Ed. 4. 5. **Et coment que le graunt extenõ a ſes Deputies, & poit ẽe dit que il poit conſtituter Deputies que ſerra expert, vncore ſi le grauntee meſme ſoit inexpert, & le graunt ſoit voyde quaunt a luy, il ne poit faire alcun Deputie a ſupplier ſon lieu,** qu a quod per me non poſſum, nec per alium. **Et quant a ceo que ad eſte dit, que playing de Cards eſt vn vanitie, voyer eſt, ſi ceo ſoit abuſe; mes le feaſance de eux neſt pas vanitie ne pleaſure, eins labour et paines**

Et voier est que nul poet faire Parke, Chase, ou Warren sans licence le Roy, car ceo fuit quodam modo dappropriater ceux queux sont feræ naturæ & in nullius bonis a luy mesme, et a restrainer eux de lour naturall libertie, queux il ne poet faire sans licence le Roy: mes p̄ hawking, hunting, &c. que sont matters de pastime, pleasure, & recreation, ne besoigne alcun licence, mes chescū poit in son terre demesne vser eux a son pleasure sans alcū restraint dēe fait, sinon per Parliament, come appiert per lestatutes de 11.H.7.cap.17.23.Eliz. cap.10.3. Iacobi Regis cap.13 Et est euident per le preamble del dit acte de 3.Ed.4. que le importation de forreine Cards fuit prohibite al grieuous complaint des poures artificers de Cardmakers, q̄x ne fuer̄ able de viuer de lour misteries, si forreine Cards serē import (come appiert per le preamble) per que appiert que le dit Act pruruieu remedy pur maintenance del dit Trade de fesant de Cards, intant que ē maintein diuers families per lour labor & industry, et autiel act est fait in 1.R.3.ca.12. Et pur ceo fuit resolue, que le Roigne ne poit suppresser le fesant des Cards deins le Realme, nient pluis q̄ le fesant de Dice, Bowles, Balles, Hawkes Hoods, Bells, Lewers, Dogges couples, & auters semblables, que sont oures de labour & artifice, coment que ils seruont pur pleasure, recreation, & pastime, & ne poient ēe suppres sinon per Parliament, ne home restraine a exerciser alcun Trade sinon p̄ Parliament 37.E.3.cap.16. 5.Eliz.ca.4. Et le playing de dice & cards nest paz prohibite per le common ley, cōe appiert M.8.& 9.Eliz.Dier 254. (sinon q̄ alcū soit deceiue p̄ faux Dice ou faux Cards, car donques cesty que est deceiue auer action sur son case pur le desceit) et pur ceo playing al cards, dice &c. nest pas malum in se, car donq̄s le Roigne ne doit tolerar̄ ne licencer ceo dēe fait. Et ou le Roy E.3. in le 39. an de son raigne per son p̄clamation commanda le exercise de Archery & Artillery, & prohibite le exercise de casting de stones & barres, & le hand & foot balles, cockfighting, & alios ludos vanos, cōe appiert in dors. claus. de anno 39. E.3.nu.23. vncore nul effect de ceo ensuist, tanque diuers de eux fuer̄ prohibite sur penaltie per diuers acts de Parliaments. Viz.12.R.2.cap.6.11.H.4.cap.4. 17.E.4.cap.3. 33.H. 8.cap.9.

Enconter diuers statutes

Auxy tiel Chē dun Monopolie encounter freedome de Trade & Traffike, est enconē diuers acts de Parliament, 5.9.E.3.cap.1.& ca.2. que pur aduancement del freedome del

Trade

Trade & Trafficke extend a touts choses vendibles, nient obstant ascũ Chẽ ou Franchise grant al contrary, ou vsage, ou custome, ou iudgmẽt done sur tielz Chẽs, quz Chẽs sont adiudge p̃ ñ le Parliamẽt dẽe de nul force ou effect, & fait al derogation des Prelats, Counts, Barons & Grandees del Realme, & al apprellion des commons. Et p̃ le statute de 25 E.3.ca.2. est puruieu, q̃ le dit act de 9.E.3. serr̃ obserue, ten⁹ et maintaine in toutz pointz: Et est ouster p̃ ñ lact puruieu, q̃ si ascũ Statute, Chẽ, Lres patents, Proclamac̃, ou Mañdement, Usage, Allowance, ou Judgemẽt soit fait al contrary, que ceo serr̃ ousterm̃t voide: Vide Magna Charta ca.18.27' E.3.ca.11.&c.

¶ Quant al 2. question fuit resolue, que le dispensation ou licence dauer le sole importation & merchandizing des Cards (sans ascũ limitation ou stint) niẽt obstant le dit act de 3.E.4. est ousterm̃t enconter ley: car voier est, q̃ intant que vn act de Parliament que generalment prohibite chose sur penalty que est popular, ou solement done al Roigne, poit ẽe incouenient a diuers ptiular persons in respect de person, lieu, tẽps &c. a ceste cause le ley ad done power al Roigne a dispẽser oue particular persons; Dispensatio mali prohibiti est de iure Domino Regi concessa, propt' impossibilitatem prævidendi de omnibus particularibus, & dispensatio est mali prohibiti prouida relaxatio, vtilitate seu necessitate pensata. Mes quant l' wisdom del pliamt ad fait vn act a restraiñ pro bono publico le importation de pluzors forreine manufactuers, al intent q̃ lez subiects del Realme poient applier eux ñ al fealance dez ditz manufactuerz &c. & p̃ c̃ maintein eux ñ & lour families oue les labours de lour maines, ozc p̃ vn priuate gaine a grant le sole importation de eux a vn ou diuers (sans ascũ limitation) nient obstant le dit act, est vn Monopoly enconter le common ley, & encounr le fine & scope del act ñ; car ceo nest pas a mainteiner et increaser les labours de les poures Cardmakers deins le realme, al petition de queux lact fuit fait, mes tout ousterment a toller & subuerter lour Trade et labours, & ceo saums ascun reason de necessitie ou inconuenience in respect de pson, lieu, ou temps, & eo potiùs p̃ c̃ que fuit grant in reuersion et p̃ ans come ad ẽe dit, mes solement le benefit dun priuate home, ses executors & administrators, pur son particular commodity, & in preiudice del weale publique. Et le Roy E.3. p̃ ses lres patents grant a vn John Peche le sole importatiõ d̃ vine douce in Londres, et

Respons ad 2. question.

et al Parliam̃t ten⁹ anno 50.E.3. cẽ grant fuit aiudge void, cõe appiert in Rot. parliam̃t. an' 50.E.3.M.33. Auxi admittãt q̃ tiel grant ou dispensation fuit bone, vn̄ l' pl' ne poit maintein̄ action sur le Case vs ceux queux impoxtont aleun foxreine Cards, mes le remedy q̃ lact de 3.E.4. in tiel case done doit ẽe pursue. Et Judgm̃t fuit done & enꝯ, quód querẽs nihil caperet per billam.

Et nota Lecteur, & obserue bien le glorious preamble et pretext de cest odious Monopolie, & voier est quod Priuilegia quæ reuera sunt in preiudiciũ Reipublicæ, magis tamen speciosa habent frontispicia, & boni publici prætextum, quam bonæ & legales concessiones, sed prætextu liciti non debet admitti illicitũ. Et nr̃e Seignior le Roy que oxe est, in vn liure que il de son zeale al ley & Justice cõmand dẽe imprimee An' 1610. intitle A declaration of his Maiesties pleasure &c. pag. 13. ad publie q̃ Monopolies sont choses enconꝯ ses leyes de cest Realme, & p̃ ceo exprẽssem̃t commaund̃ que nul suitor p̃sumeꝯ a mouer luy a granter aleun de eux &c.

Hil.

Hill. 4. Iacobi Regis.

Le Countee de Deuonſhires caſe.

CHarles Countee de Deuon Maiſter del Ordinance generall, obteine del Roy un Priuie Seale port date vltimo Octobris Ann. 2. Regis Iacobi in ceux parols, Iames by the grace of God &c. To our right truſtie and right welbeloued Couſin and Councellour Charles Earle of Deuonſhire, our Lieutenaunt of our Realme of Ireland; and Maiſter of the Ordnance generall, greeting &c. Foraſmuch as we are giuen to vnderſtand, that ſuch munitions as are vtterly decayed and vnſeruiceable, haue beene heretofore claimed, taken and enioyed by the Maiſters of the Ordnance for the time being, as fees and auailes to them by reaſon or in reſpect of the ſaid office belonging; our will and pleaſure therefore is, and wee doe heereby giue vnto you full power and authoritie; that you may at your pleaſure receiue and take out of the ſtore within the Tower of London, all ſuch broken and other vnſeruiceable yron ordnance, ſhot, & other munitions whatſoeuer as are particularly expreſſed, mentioned or ſet downe in a Booke &c. and the ſame to receiue, imploy, and conuert to your owne vſe &c. p force de q̃ le dit Countee prist hors del ſtore le Roy deinz le Tower diuz peeces de iron ordinance, ſhott, et auter munition mention en le dit liure, et eux vend a diuers perſons pur argent, et iſſint conuert eux a ſon opes

opes demeine, et puis fist son testament & ent fist executor & morust: Et ore le question fuit, si lexecutor del dit Countee poit estre charge al Roy pur le dit conuersion del dit Ordinance et Munition: Et le Roy referre le examination & cõsideration de cest case al deux Chiefe Iustices & Chiefe Baron. Et le councel del dit exec̃ obiect q̃ lexecutor ne serr̃ charge in cest case pur 3. causes.

1. Pur ceo q̃ in veritie broken cast & vnserviceable Iron Ordnaunce, Shot, & auter Munition appent al Maister del Ordnance come fees et auailes appurteinant a son Office, & offer a producer diuers testmoignes a prouer que les Maisters del Ordnance pur le temps esteant pur 60. ans passe ount prise le broken cast et vnserviceable iron Ordnance, Shot, et auter Munition come lour fees et auayles due a lour Offices.

2. Admittant, que eux ne fuer̃ fees appurtenant a lour Offices, vncore le Roy per son Priuie Seale ad done eux especialment expresse in le dit liure al dit Countee, per force de que il poit loyalment eux prender et conuert eux a son opes, coment q̃ ilz ne fuer̃ dues a luy come fees & auailes in respect de son Office.

3. Fuit obiect, que in cest case lexecutor ne poet estre charge in Detinue, car nul des dits biens le Roy deueigne a ses maines, ne in Account, car le testator ne vnques fuit tenus al Roy a render account, neq; come Baily neq; come Resceiuor, car nul home serra charge in account forsque come garden in socage, Baily, ou Resceiuor, et ne sont auters letters original in le Register a charger ascun in accoũt forsque in les dits 3. cases. Vide Registr. 135. 19.H.6.5. 29 H.6.tit.Account.6. Et ceo est le cause q̃ vn apprntice p̃ noisme de apprentice nest pas chargeable in account 8.E.3.46. F.N. B.119.d.7.H.4.14. Et coñt q̃ le Roy ad prerogatiue a charger lexecutors dun accountant, vncore il doit charger lexecutors solem̃t ou le testator fuit chargeable in ley in vn des dits 3. cases.

Aury, quant ascun soit charge come Baily ou Resceiuor, la couient estre priuitie a charger luy, mes quaunt vn clayme ascun chose a son vse demeine, la il ne vnques serr̃ charge in Account, pur ceo que il poit pleader vnques son baillee vnques son resceiuour pur account, render, et oue ceo accord 2. Mariæ Brooke Titul. Account 89. & 2. Henr. 4.12. a. 39. Edw. 3.27. Jssint in le case al barre le Countee

claime

claime eux a ſon opes demeſne, pur quel nul accompt giſt vers luy, mes ceſt perſonel tozt, ſi alcun fuit, mozuſt oue ſon perſon.

¶ Quant al priñ, fuit reſponde & reſolue que le Countee ne poit claymer les dits iron Ordnance come fees ou auailes appurtenant a ſon Office, car l'dit office fuit erect õ tardiffe temps: car le Roy Hen.8.ann.35. de ſon reigne p ſes letters patents nouelment erect le dit office del Maſter del Ordnance & graunt ceo al Thomas Seignioz Seimoz, & puis ſ̃ mozt, ceſtaſcauoir, 1. Mariæ, ceo fuit graunt a Sir Richard Southwel, & puis ſon mozt ceo fuit grant al Ambroſe Sñr Dudley: iſſint q̃ le dit Countee ſans queſtion ne poit claimer ceux come ancient fees p preſcription a vn nouel office.

¶ Quant al 2. fuit reſolue, que le dit Priuie ſeale fuit fait ſur faux ſuggeſtion, & que le Roy fuit en ceo deceiue: car in le caſe le Roy ceux parols (heretofore claimed, taken and enioyed, by the Maſters of the Ordnance for the time being) ſerr̃ intend dẽe loyalment claimed, priſe & enioy, et nemy p tozt ou vſurpation: & auxi ceſt parol (belonging) imply droit a prender eux, et pur ceo le dit Priuie Seale eſteant foundu ſur faux ſuggeſtion conteine in le dit Priuy Seale, et iſſint le Roy deceiue per matter apparant in meſme le Priuie Seale, per conſequence, le Priuie Seale eſt tout outerm̃t voide.

¶ Quant al 3. Obiection, fuit reſponde et reſolue per Court, que coment que le dit Countee clayma eux a ſon opes demeſne, vncoze il ſerr̃ tenus al Roy daccounter, pur ceo que in le caſe le Roy le Ley fait priuity: car ſi alcun priſt les biens le Roy ou enter in ſes terres de ſon tozt, vnc̃ le Roy poit charger luy in Account. 33.H.6.2. & 4.H.7.6. 7.H.7.10. 15.H.7 17. 1.Eliz.249. Brereto̅s caſe. & 40.Aſſ.pl.75. Si biens ſoient deuiſe al Roy, in quecunqz maines que ils deueign̄, le poſſeſſoz ſerra charge (in Account) al Roy, et le Roy neſt pas chace a ſon action de Treſpaſſe, car donques per le mozt del partie le Roy ſerr̃ ſauns remedy: mes le Roy poit per ſon Prerogatiue auer action daccount vers les executozs del partie, come appiert in Litt' fol.28. Et le Roy neſt pas tenus a charger le defendant come Bailie ou Receiuer, come common perſon doiet, mes le Roy poit alledger in ſon information generalment, que il ad compotum Domino

Regi

Regi reddend' tempore mortis suæ tenebatur, in tant de g̃ sums dargent due al Roy &c. come appiert per mults Presidents in Lescheq̃r & in le Banke le Roy: & pur ceo sur euidence sil appiert que il est accountable al Roy in ascun manner, il serr̃ charge; come si vn per letters patents, ou per vertue de son office, ad power a asseller Fines sur Grants ou admittances faits aux Copiholders deinz tiel Mannor del Roy, et il asselle petit fines pur le Roigne, et desouth maine prist grand summes, ou auters rewards, dez Copiholders a son opes demesne, in disceit & preiudice le Roigne, in ceste case il poit estre charge al Roy in account pur tout, car in veritie tout fuit due al Roy. Et le Roy, que est Lieutenaunt de Dieu, dirra a tiel faux Steward, Redde rationẽ villicationis & vellicationis tuæ, Et sil mozust, ses executors in case le Roy serra charge, car come Sir William Herle chiefe Justice del banke in 3.E.3.fol.10. dit, Account doit estre mene per equity & bone foy. Vide 2.R.2.Tit.Account, 47.& 3.E.3.10. Et en 39.Ass.pl.18. est tenus, que les Officers ou Ministers le roy ne poient faire riens in disauantage del roy, mes in son aduantage.

Mes fuit dit, que fuit saums President, que le executors dascun tiel grand Officer serr̃ charge puis son mozt, pur ceo que il mesme puit mieux auer exoñat luy mesme, que ses executors q̃ sont estrangers a ses accoũts et besoignes, et pur ceo serr̃ conuenient, que sicome son office cessa per son mozt, issint le charge, in respect dascun deceit ou tozt concernant son Office, dont il ne fuit detect in son vie, cessera auxy per son mozt, come personall tozt. A que fuit dit & resolue, que cest reason fait enconter le Prerogatiue que le Ley done al roy, cestascauoir, que il chargera le executors de son Accountant, et pur ceo nest digne ascun aũr respons. Mes ceo nest pas sans mults Presidents, lun de queux fuit adiudge in Lescheq̃r, que est enter Mich.37.& 38.Reginæ Eliz.Rot.312.

Sir Walter Mildmays case.

in information preferre p Lattorney generall pur le roigne vers Edward Carie et William Doddington Esquires, executors de Sir Walter Mildmay Chiualier iades Chãcellor del Eschequer, pur ceo que le dit Sir Walter fuit tenus al roigne, iour de son mozt, a render account de diuers summes dargent amountant ensemble al 1525.l. del treasure le roigne in le receit del Eschequer al westm̃, inter Festũ Natalis Domini anno 1.Eliz. & idem Festum anno Regni sui 20. receiue, a render ent accoũt al roigne, & quod nemo prædictũ com-

compotum adhuc reddidit, nec reddere conatus eſt, & que le dit Sir Walter conſtitute les def. ſes executors &c. Les def. plead, quòd ꝑdictus Walterus Mildmay non recepit ꝑd 1525.l. aut aliquam inde parcellã, ad inde Dn'æ Reginæ computandum, nec die quo obijt tenebatur eidem Dominæ Reginæ in compoto inde, aut alicuius inde parcellæ reddend modo & forma &c. & de hoc pon' ſe ſuper patriam &c. Nota bone iſſue per le rule del Court et les Jurors troue p le def. ſauant p̃ 1160.l. ꝓel &c. p̃ q̃ux ils donont vn ſpeciall verdit, ſ. Que Anno 1. Eliz. le Roigne p ſes lr̃es patents conſtitute le Marques de Winchester Theſaurariũ Scaccarij ſui durante b̃ene pl'ito (et conſtitute luy Treaſorer Dẽgliterre p bailer a luy le ſtaffe) & puis in m̃ le prim̃ an el conſtitute le dit Sir Walter Cancellariũ Scaccarij ſui pro termino vitæ ſuæ, & puis in m̃ le prim̃ an el cõſtitute p ſes lr̃es patents Ricardum Sackuill Militem Subtheſaurarium Scaccarij pro termino vitæ ſuæ: & q̃ les dits Treaſorer et Undertreaſorer del Eſcheq̃r 10. Iulij 1596. ſeſoient vn garrãt in eſcript deſouth lour mains p̃ le payñt al dit Sir Walter Mildmay Chancellor del Eſcheq̃r, del treaſure le Roigne in le receipt eſteant, C.l. annuem̃t p̃ ſon diet, & 40. l. p̃ ſ̃ attendance al Londres in temps de vacation, durant le pleaſure le Roigne; pur c̃ que le Chauncellor del Court de prim̃ fruits et tenths (quel Court eſt ore annexe al Eſchequer) ad allowance in meſme le Court pur ſon trauaile & attendance in m̃ loffice; & p reaſon del annexation del dit Court de prim̃ fruits, & auxi del Court de Augmentatiõs, le dit Chancellor del Eſcheq̃r fuit charge oue pluſors beſoignes & attendance, cibien in Terme come hors del Terme, pluſ q̃ aſcun Chancellor del Eſcheq̃r deuant auoit ẽe: & ceux fuer̃ lez cauſes q̃x mouoient le Treaſorer & Undertreaſorer a faire le dit garrant, & fuer̃ expres in c̃, & direct al 4. ordinarie Tellers del Receit del Eſchequer ou al aſcun de eux: Et puis le Roigne Elizab. 19. Martij anno regni ſui ſecundo, direct ſ̃ garrant aux Treaſorer, Chamberleins, & Undertreaſorer, deſouth ſ̃ prim̃ ſeale, p q̃l, inter auters articles concernant le Prim̃ Councell, & paiñt des fees al aſcun Officer &c. due & accuſtomed, le dit roigne voiloit et command eux, q̃ ils ou aſcun vn de eux de temps in temps paier̃ del treaſure le Roigne, p̃ les labours, coſts, & exp̃ces de cheſun pſon q̃ auoit ẽe, ou ſer̃ aſſigne ou appoint per n̄re cõmiſſion ou commandm̃t a inquier p̃ nous, ou per nous ou n̄re coũcel, ou p vous ou aſcun de vous cõmanded, ou q̃ ſer̃

mise a labour, chiuaucher, escrier, ou trauailer pur ou entour nostr̃ causes, matters, et affaires, chose ou choses q̃cunque, solonqz lour demerits, in cy large maner & forme cõe in alcun temps in auant auoit ẽe done ou reward in nr̃e dit Eschequr, p alcun Treasorer, Chamberlains, Undertresorer, et pluis large p lour discretions: (& ĩ fuit le clause sur que l' Councell del def. relia:) & lez Jurorz trouont ouster, Que les dits 1160. l. fuit pay al dit Sir Walter Wildmay puz le dit garr̃ delouth le dit pr̃iuie seale pur son diet et attendance in temps de vacation al Londres, et que les dits deniers fuer̃ pay del treasure le Roigne p Rich. Stoueley vn dez Tellers del dit receit al dit Sir Walter, & p le dit Sir Walter receiue a son oeps demesne p force ou colour del dit garrant del dit Treasorer et Undertreasorer, et q̃ le dit sir Walter exercise son office auant dit, et discharge le duty de ceo durant son vie, & q̃ le dit Stoneley account anumelñt deuãt le Treasorer et Undertreasorer et auks officers, a q̃ux apptain a oyer et determiner le dit accoũt, et auoit allowance p̃ les seũal pauñts auãt dits, et plein discharge p̃ eux: et si sur tout le dit matter le Court adiudgera que le dit Sir Walt̃ ad receiue lez ditz deniers p̃ account render al roign, donques ilz trouont p̃ le roigne, & si nemy, p̃ les def. Et in cest case, 3. points fuer̃ moue. 1. Si le Seignior Tresorer p luy, ou oue as̃ aut̃ officer le roy, poet p̃ le dit, ou alcũ auter reasonable cause, ex officio, allower as̃ fee ou reward p̃ le necessary ꝑuice del roy. 2. Admittant q̃ il nad power ex Officio, sil ad power in cest case p vertue del dit pr̃iuy seale, a faire le dit allowance, ou nemy. 3. Jntant q̃ sir Walter receiue eux a son oeps demesne, sil serr̃ charge a rend̃ account p̃ eux sur le dit issue ioine, cõe est auant dit.

¶ Quant al pr̃imer, deux points fuer̃ resolue. 1. Que nul Officer que le Roy ad, ne touts eux ensemble, poet ex Officio issuer ou disposer del treasure le Roy, coment que soit pur le honor ou profit del roy mesme, mes ceo doit estre per garrant de roy mesme: car voier est que est pur le honor et benefit le roy, q̃ bone seruice fait al roy serr̃ reward, mes ceo doit estre reward per le roy mesme, ou p son garr̃, et per nul auter, car le treasure le Roy (esteaunt le ligament de peace, le pr̃eseruer del honour et saletie del Realme, et les sinewes de guerre) est de cy haut estimation in Ley, in respect del necessitie de ceo, que le imbesiler del Treasure troue, coment q̃ ne fuit in les cists le Roy, fuit treason.

Et

Et treaſure et auters valuable chateux ſont cy neceſſarie et incident al Cozone, que in le caſe le Roy eux alera oue le Cozone al Succeſſoz, et nemy aux executozs, come in caſe de common perſons; come appiert 7.H.4.43.& 44. E. 3.42. et pur ceo ſauns garr̃ le Roigne meſme nul treaſure ferr̃ iſſue, pur alcun cauſe quecunque, per alcum Officer ex Officio.

2. Fuit reſolue, que cheſcun garrant le Roigne meſme a iſſuer ſon treaſure, neſt ſufficient: car garr̃ per parol ou bouche le Roigne, ou (que eſt pluis) garrant le Roigne in eſcript deſouth ſon Pziuie ſignet, neſt pas ſufficient a iſſuer ſon treaſure: et ceo appiert p vn iudgement in Leſchequer in Petilians caſe Hill. 1.E.4.Rot.14.in dorſ. ou tiel garr̃ deſouth le Pziuy Signet a iſſuer le treaſure le Roy fuit diſallow, Vide 14.E.4.2. Et vncoze in alcun caſe le Ley pziſt conuſanz del Pziuy ſignet: et pur ceo ſi le Roy deſouth ſon Pziuie ſignet pzohibite vn a paſſer hozs del Realme, eſt ſufficient. F.N.B.fol.85. Mes le garr̃ que eſt ſufficient in ley a iſſuer le treaſure le Roy, doit eſtre deſouth le grand ſeale ou pziuie ſeale.

¶ Quant al 2. queſtion fuit reſolue, Que le dit clauſe extend aux Commiſſioners et auters inferioz pſons queux trauailer̃ entour les beſoignes le roigne, et nemy al Chancelloz del Eſchequer, pur que (inter auters) vn expzes clauſe fuit deuant in meſme le pziuie ſeale. Auxy ceſt clauſe eſt ſolonque lour demerits ꝛc. iſſint que per le pziuie ſeale, le merit couient pzeceder le reward, et in ceſt caſe le garr̃ fuit fait deuant alcun merit ou deſeruing. Auxy le pziuie ſeale eſt, in ey large et ample manner et fozme, come in alcun temps in auant auoiẽt ẽe done ou reward ꝛc. et neſt troue q̃ in auant alcun allowance ad ẽe fait al Chanceler del Eſchequer dalcũ tiel fee ou reward. Auxy fuit touch (mes nemy reſolue) q̃ ou le Pziuie ſeale don authozitie al 4. ou a vn de eux, et 2. font le garr̃, que ils nont purſue lour Authozitie. Vide 36. H.8.62.& 27.H.8.

¶ Quant al 3. point, fuit reſolue, Que coment que le dit Sir Walter receiue le treaſure le roy a s̃ oeps demeſne, vncoze intant que il receiue ceo ſans loyall garr̃, il ſachant que fuit le treaſure le Roy, le Ley fait pzuitie in le caſe le Roigne, et pur ceo el poet charger luy come Accountant. Et iſſint fuit adiudge in Leſchequer Paſch. 31.El.Rot.150. Iurdens caſe.

Et in le caſe le Roy neſt de neceſſitie que les deniers ou bien le Roy deueigne aux maines del teſtator, mes ſil ſoit vn meane ou inſtrument per que le Roy eſt miſe al perde ou damage, il ſerẽ charge a tant que il mit le Roy al damage, & il ſerẽ compel al ſuit le Roigne reddere rationem de eo, que ẽ en nature dun account. Et pur ceo eſt vn notable Preſident in Leſchequer Mich. 30. E. 3. Rot. 6. ou le caſe fuit Quod Willielmus Porter eſteant Magiſter monetæ &c. couenant oue le Roy per Indenture inrolle, q̃ tout le bullion que ſerẽ deliuer ad Cambium Regis pro moneta facienda, que money ſerẽ deliũ pur ẽ deins 8. iours: q̃l couenant le dit William Porter infreint, car il ne deliũ a diũs ſubiects lour money a eux due pur le bullion que eux port ad Cambium, accordant a ſon couenant. Sur que (ſur monſtrans de ceo in Leſchequer) le Roy paya a eux tout le mony due pur lour bullion; et pur ceo q̃ Iohannes Walweyn, & Henricus Picard, duxerunt & præſentauerunt dictum Willielmum Porter in Officium illud tanquam ſufficient' (et que ils offer dẽe mainpernors de luy, mes ne fuer̃ priſe, quel matter les dits John Walweyn et Henry Picard confeſſe) ideo conſideratum eſt quod prædicti Iohannes Walweyn & Henricus Picard onerentur verſus Dominum Regem &c. et fuer̃ charge a ſatiſfier al roy touts les deniers queux le Roy ad pay pur le dit William Porter. Et coment que riens del treaſure del Roy deueigne a lour maines, ne ils auoient alcun priuate benefit per alcun matter que appiert in le dit caſe, vncore pur ceo que ils fuer̃ meanes & cauſes del perde et dammage del roy, ils fuer̃ per iudgement charge al roy: et intant que ils fuer̃ chargeable per la ley, in ceſt caſe ſils vſſont deuie deuant iudgemẽt vers eux, ſans queſtiõ lour executors &c. ſerra chargee, car ou le teſtator eſt per la ley chargeable a ſatiſfier le Roy pur perde ou damage fait a luy, ſon mort ne diſpenſera oue ceo, mes que ſes executors &c. ſerra charge al Roy. Et fuit reſolue, que in le dit caſe le Roigne ou poet charger les executors de Sir Walter, ou ceux queux feſoient tyell illoyall garẽ a ſon election. Et vn iudgement fuit cite in largument de ceſt caſe de Termino Trin. anno 24. E. 3. Rot. 4. in Leſchequer. Un Walter de Chirton, Cuſtomer le Roy, auoit purchaſe certaine terres oue largent le Roy, et per couin auer̃ cauſe le vendor de infeoffer ſes amies in fee a defrauder le roy, et nient meyns prift les iſſues et profits del terre a ſon oeps demeſne, et ceux terres per Inquiſition fuer̃ re-

torne

torne oue les values in Leſchequer, & la per iudgemẽt fuer ſeiſies in les maines le Roy tanque &c. & vncore leſtate del terre ne fuit vnques in luy. Mez ceſty que intend̃ a deceiuer le Roy de ceo que a luy appent, voille en le fine deceiue luy meſme. Vide Lecteur ou coment le Roy leuiet̃ le ſumme de que alcun eſt chargeable a luy per la ley, non ſolement vers le partie meſm, ſes terr̃ & biens in ſes maines demeſne, mes in les maines de ſes heirs, aſſignes, executors, ou adminiſtrators, & ſil nad executors ou adminiſtrators, donq̃s in l'z maines des poſſeſſors de ſes biens del mort, a render account al Roy &c. Et pur ceo Vide vn notable record in Scaccario de Termino Mich. an. 24. E. 3. Rot. 11. ex parte Rememoratoris Regis Thomas Fauels caſe q̃ fuit vn Eſchequer chãber caſe per touts les Juſtices & Barons, & vouch p Sñr Dyer 4. & 5. Ph. & Mar. Dyer, 160. Paſch. 2. El. Rot. 111. Sir William Cauendiſhes caſe, & report p le Sñr Dyer, 5. Eliz. fol. 225. Pl. Com̃. in le caſe de Mynes, 321. a. & b. Vide 50. Aſſ. pl. 5.

Et puis le recut̃ del dit countee de Deuon ſatiſfie le Roy pur tout le dit iron ordinance, ſhot, ou munition, que il ſans gart̃ ad conuert a ſon oeps.

Trin. 13. Iacobi Regis,
in Banke le Roy.

Iames Bagges caſe

IAcobus Dei gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Rex fidei defenſor &c. Maiori & Communitati Burgi de Plymouth in com' Deuon' ſalut': Cum Iacob⁹ Bagge vn⁹ duodecim Capit. burgen' ſiue magiſtrat' burgi prædicti, ſecundũ conſuetudinem in burgo prædicto hactenus vſitat', debite electus & præfectus fuerit, Cumq; idem Iacobus in officio vnius duodecim Capital. burgen' ſiue magiſtrat' burgi prædicti diu ſe bene geſſerit & gubernauerit, Vos tamen Maior & Cõmunitas burgi prædicti præmiſſ. parui pendent', prædictum Iacobum indebite & abſque cauſa rationabili ab officio vnius duodecim Capital' burgenſ. & magiſtrat' burgi p̃d minus iuſte amouiſtis, in noſtri contempt', & ipſius Iacobi dampn' non modicum & grauamen, & ſtatus ſui læſionẽ, ſicut ex querela ſua accipimus: Nos igitur præfato Iacobo debit' & feſtinam Iuſtitiam in hac parte fieri volentes, vt eſt iuſtũ, Vobis & cuilibet veſtrũ mandamus, ſicut alias vobis mandauerimus, firmiter iniungent', quod immediate poſt receptionem huius breuis, prædictum Iacobum in prædictum officium vnius duodecim Capital. burgen' ſiue magiſtrat' burgi prædicti reſtituat' cum omnibus libertatibus, priuilegijs, & commoditatib⁹ ad officium prædictum ſpectan' & pertinen', vel cauſam nobis inde ſignificar' ne in veſtro defectu querela ad nos inde perueniat iterat':

Et

Et qualiter hoc breue noſtrum fuerit executum, nobis a die ſanctæ Trinitatis in tres ſeptimanas, vbicunque tunc fuerimus in Angl', conſtare fac' ſub pœna quadragint' librarũ, hoc breue noſtrum nobis tunc remitten', T. *E. Cooke* apud Weſtm. duodimo die Iunij Anno Regni noſtri Angliæ, Franc', & Hiberniæ tertiodecimo, & Scotiæ Quadrageſimo Octauo, per Tr. de An. 13. Iacobi Regis Rot' 23. Executio iſtius breuis patet in quadam ſcædula huic breui annexa, Iohn. Clement Maior. Reſponſio Maioris & Cõmunitatis burgi de Plymouth ad breue huic ſcedul. annexat'. Secundum exigentiam breuis prædicti, Domino Regi humilime Certificamus, Quod Domina Elizabetha nuper Regina Angliæ per literas ſuas patentes, magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſt. viceſim' octauo die Februarij anno regni ſui quadrageſimo tertio, pro ſe, hæredib⁹ & ſucceſſorib⁹ ſuis cõceſſit maiori & Communitat' burgi de Plymouth p̃d & ſucceſſoribus ſuis inter alia, quod Maior & Recordator burgi prædicti pro tempore exiſten' duran' tempore quo ipſi in officijs ſuis fore contigerint, Et vlterius prædeceſſ. præf. Maioris adtunc ſuperſtes & pro tempore exiſten' & ſucceſſ. ſui forent Iuſticiarij eiuſdem nuper reginæ & hæredum & ſucceſſorũ ſuorũ ad pacem in eodem burgo & infra limites, præcinct. & libertates eiuſdem conſeruand' & cuſtodiend', & conſeruari & cuſtodiri faciend' abſque alio mandat', commiſſione, ſiue warranto proinde habend' ſiue obtinend': Et vlterius dicto Domino Regi Certificamus * quod infra burgum prædictum talis hẽtur & de tempore cuius contrarij memoria hominum non exiſtit, habebatur vſus & conſuetudo, quod Maior & *duodecim Capitales burgenſ. burgi illius extiterunt & fuerunt de priuato conſilio burgi præd. & viginti quatuor de alijs diſcretioribus burgenſibus burgi præd. pro tempore exiſten' ad hoc electi & iurati extiterunt & fuerunt ſimul cum prædict' Maiore & duodecim Capitalibus burgenſibus de communi conſilio burgi p̃d, pro meliore regimini & gubernatione eiuſdem burgi, * Et quod quilibet talis burgenſis qui in ſocietatem prædict' vigint' quatuor burgenſium de communi conſilio præd. electus fuerit, antequam ad eandem ſocietatem admiſſus fuerit, * Sacramentum præſtaret corporale coram Maiore burgi illius pro tempore exiſten', quod ipſe bene & honeſte ſe gereret tam erga Maiorẽ burgi præd. pro tempore exiſten', quam erga præf. duodecim Capitales burgenſes burgi illius pro tempore exiſten', & eis de tempore in tempus reuerentiam præſtaret, & qd manutenerit & ſuſtentaret libertates & communem vtilitatem burgi prædict. optimo conſilio & aduiſamento ſuo: Et vlterius Certificamus quod quilibet præ-

* *Il duit auer primerment preſcribe que la auoit ẽe vn incorporation dun Maior &c. de temps dont &c.*

Vide 22. H. 6 tit. preſcriptiõ 47. 6. E. 6. Dyer 71. &c.

* *12. (hiefe burgeſſes* de priuato cõſilio burgi *ſerra pluis apmene dit* de priuato cõſilio Maioris & burgenſium.

* *Ilz ne preſcribõt ne alledge aſcun Charter que ilz poſent diſfranchiſe aſcun del Corporation.*

* *Le ſeremẽt dun chiefe burgeſſe.*

Ilz ne preſcribent in ceo, et vncore eſt inconter common droit.

1. Die Maij an. 32. Eliz. Iames Bagge elect vn de 24.

Eodē primo Maij 32. Eliz. elect vn del 22. Iure.

prædictorum duodecim Capital' burgenſium de tēpore in tēpus electus & præfectus fuerit per Maiorē burgi p̄d & reſiduos præd duodecim Capital. burgenſium vel per maiorē partē eorundem pro tempor' exiſt. tantū, ſine conſenſu vel aſſenſu prædictorū viginti quatuor aliorū burgenſ. qui ſunt vt præfertur de communi conſilio burgi præd. ad hoc requiſit': Et vlterius certificam⁹, qd præd. Iacobus Bagge primo die Maij ann. Regni Dominæ Elizabethæ nuper Reginæ Angliæ triceſimo ſecundo, apud Plymouth præd. ritè elect. & præfect. fuit vnus prædictorū viginti quatuor burgenſium de cōmuni conſilio burgi prædicti tūc exiſten', & eodem primo die Maij an. triceſimo ſecundo ſupradicto apud Plymouth prædictā Sacramētū præſtitit corporale corā tunc Maiore burgi p̄d iuxta antiquā conſuetudinē præd. qd ipſe idem Iacobus benè & honeſte ſe gereret tam erga Maiorē burgi p̄d pro tempore exiſten' quam erga cæteros duodecim Capitales burgenſ. burgi illius pro tempore exiſten', & eis de tempore in tempus reuerentiā preſtaret & libertates & communem vtilitatem burgi prædict. optimo conſilio & aduiſamento ſuo manuteneret & ſuſtentaret: Et vlterius Domino Regi Certificamus, qd præd. burgus de Plymouth tam prope littus & Coſteras maris ſcituat' exiſtit, quod ratione inde, & ratione quotidiani concurſus nauiū & battellorum ibidem applicantiū tam a partibus tranſmarinis quam alibi, multi homines maleuoli tā alienigeni quā indigeni malæ & peruerſæ conuerſationis, boni regiminis contemptores, & pacis perturbatores, in nauibus & battellis prædictis ibidem confluen' in burgo prædicto & infra limites & præcinct eiuſdem commorantes & reſidentes indies inueniuntur, qui ad boni regiminis & gubernacionis obedienc' haud facile ibidem reduci queant, niſi authoritas Maioris illius burgi pro tempore exiſten' & aliorum Capital. burgenſium prædict. debita reuerentia aliorum comburgenſium & inhabitantium burgi illius muniatur, & perſonæ eorundem Capital. burgenſ. & Maioris a contemptu apud vulgus præſeruentur: Et vlterius dicto domino Regi certificamus, quod prædictus Iacobus Bagge, præmiſſorū non ignarus, Sacramentū ſuum prædict. parui pend', & authoritatem tam Maioris burgi præd. pro tempore exiſten. & vltimi prædeceſſoris ſui præd. quā aliorū Capital. burgenſ. burgi præd. vile pendens, ipſamque authoritatem in contemptum inducere laborans & intendens, primo die Maij Anno Regni dicti Domini Regis nunc ſexto, eodem Iacobo adtunc exiſten' de Communi conſilio burgi prædicti, & vno Capitalium burgenſium burgi illius, in præſentia cuiuſdā Roberti Trelawny tunc Maioris burgi præd. exiſten.

&

& quãplurimorum aliorum inhabitantium burgi prædicti, apud Plymouth prædict' infra burgum prædictum contẽptuoſe & ſcurriliter tam geſtura quam verbis erga præfat. Maiorẽ ſe geſſit, Ac adtunc & ibidem præfato Robert' Trelawny contẽptuoſe & ſcurriliter & ſine aliqua cauſa rationabili hæc Anglicana verba ſequẽtia palam & publice dixit & propalauit, viz. [a] **Vou** (præfatũ Robertũ Trelawny innuendo) **are ſome prince are you not?** Et vlterius dicto Domino Regi Certificamus, quod poſtea, ſcilicet primo die Februarij anno Regni dicti Domini Regis nunc ſeptimo, prædictus Iacobus Bagge, maleuolam ſuam diſpoſitionẽ & intentionem antedictam continuando, apud Plymouth prædict' in præſentia & auditu dict' Ro. Trelawny tunc exiſten' Iuſtic' pacis dicti Domini Regis infra burgũ prædict' conſeruand' ratione Maioratus ſui burgi prædicti anno tunc prox. præceden' virtute literarũ patentiũ prædict. ac in præſentia & auditu quamplurimorum aliorum inhabitantium burgi pd palam, publice, & alta voce ſine aliqua cauſa rationabili hæc Anglicana verba ſequentia de pref. Roberto Trelawny contẽptuoſe, falſo, & ſcandaloſe dixit & propalauit, viz. [b] **Vou** (præfat. Rob. Trelawny innuendo) **are a cozening knaue**, vbi reuera prædictus Robertus Trelawny tota vita ſua honeſte & ab omni ſuſpicione alicuius falſitatis, fraudis, vel doli penitus inſuſpectus vixit, & in officijs tam Maioratus quam Capitalis burgenſ. burgi illius laudabiliter ſe geſſerit & gubernauerit: Et vlterius dicto Domino Regi Certificamus, quod viceſimo die Nouembris anno Regni dicti Domini regis nunc ſeptimo, prædictus Iacobus Bagge, continuando maleuolam diſpoſitionem & intentionem ſuam prædictam, apud Plymouth prædict. ſeditioſe & malitioſe incitabat & perſuadebat quendam Thomam Sherwil adtunc vnum Capital. burgenſ. burgi prædicti exiſten', qd ipſe idem Thomas ſeipſ. cum præfat. Iacobo Bagge in coſpirationem coniungeret ad amouend' & deponend' quendam Iohonnem Battersby tunc Maiorẽ burgi prædicti exiſten', ab officio Maioratus ſui præd. ſine aliqua cauſa rationabili aut legali, Et adtunc & ibidem malicioſe & contemptuoſe dixit præfato Thom. Sherwill de præfat. Iohan. Batersby hæc falſa, opprobrioſa, & ſcandaloſa Anglicana verba ſequentia, viz. [c] **Maſter Maior** (præfat' Iohannem Batersby innuendo) **carieth himſelfe fooliſhly in his place; And if you will ioyne with me, wee will turne him out of his Maioraltie, and chooſe a wiſer man in his place**, vbi reuera præfatus Ioh. Batersby durant' toto tempore Maioratus ſui prædicti ſeipſũ in exercendo

[a] *Ceux parlos ſont dẽe reprehend, mes ne ſont cauſe a luy diſfranchiſer.*

[b] *Ceux parols ſont contemptuous et digne de puniſhment, s. dẽe lie a ſon bone port, ſils fueront publy quãt le Maior fuit ſeant in execution de ſon office, mes ne ſont cauſes a diſtranchiſer le delinquent.*

[c] *Ceux parols ne ſont aſcun cauſe pur luy diſfranchiſer.*

1. *Pur ceo que riens fuit fait & poet ẽe que la fuit iuſt cauſe a luy remouer, & le cauſe certifie doit ẽe tiel que il poet appearer al Court, que ceo eſt iuſt cauſe a luy diſſrãchiſer, car le party griene ne poit aũ reſpons a ceo.*

ercendo officio ſuo prædicto bene & diſcrete ſummaque cum integritate quam grauitate ſe geſſerit: Et vlterius dicto Domino Regi Certificamus, qd poſtea, ſcilicet primo die Februarij Anno Regni dicti Domini Regis nunc octauo prædict' Iacobus Bagge maleuolam ſuam diſpoſitionē & intentionem antedict. continuando, apud Plymouth prædict. in Guyhalda burgi prædicti in præſentia cuiuſdā Thomæ Fowens adtunc Maioris burgi prædicti exiſten', ac in præſentia & auditu diuerſorū tā Capitalium burgenſiū, quā aliorum inhabitantiū burgi prædicti contemptuoſe, contumelioſe, & ſine aliqua cauſa rationabili dixit præfato Thomæ Fowens hæc falſo & approbrioſa Anglicana verba ſequentia, viz. **Thou** (præfat' Thomā Fowens tunc Maiorē innuendo) **art an inſolent fellow**, vbi reuera prædictus Thomas toto vitæ ſuæ curſu ſeipſum erga omnes homines honeſte, ciuiliter, & laudabiliter geſſit & gubernauit: Et vlterius dicto Domino Regi Certificamus, quod poſtea ſcilicet primo die Auguſti Anno Regni dicti Domini Regis nunc nono apud Plymouth prædict. in præſentia & auditu præfat. Tho. Fowens & quāplurimor' aliorū burgenſiū & inhabitantium burgi prædicti in Guyhalda burgi prædicti congregat' exiſten' prædictus Iacobus Bagge, continuand' maleuolam diſpoſitionem & intentionem ſuam antedictam, diuerſa contemptuoſa verba de præfato Tho. Fowens tunc Maiore burgi prædicti exiſten' dixit & alta voce propalauit, ſuper quo præfat. Tho. Fowens adtunc & ibidem mitiſſimis verbis admonens præf. Iacobū Bagge, quod ipſe deſiſteret a verbis contēptuoſis prædictis propalandis, præfatus Iacobus Bagge ſuperinde adtunc & ibidem ſcilicet decimo die Auguſtij Anno nono ſupradicto apud Plymouth prædict. ac in præſentia & auditu prædict' Tho. Fowens tunc Maioris burgi prædicti, & quāplurimorum aliorum burgenſium & inhabitantium burgi prædicti, & in contemptum & opprobrium ipſius Tho. Fowens tunc Maioris, conuertens poſteriorem partem corporis ſui more inhumano, & inciuili, verſus præfat. Tho. Fowens, ſcurriliter, contemptuoſe, inciuiliter, & alta voce dixit præfat. Tho. Fowens hæc Anglicana verba ſequentia, videlicet (**come and kiſſe**) Et vlterius dicto Domino Regi Certificamns, qd poſtea, ſcilicet viceſimo die Auguſti Anno Regni dicti Domini Regis nunc nono, apud Plymouth prædict' præfatus Iacobus Bagge inſolentiſſimis verbis præfat. Thomā Fowens tunc Maiorē burgi præd. exiſten. abſque aliqua rationabili cauſa malicioſe minatus fuit & adtunc & ibidem præfato Tho. Fowens minaciter & malitioſe hæc Anglicana

Vt ſupra.

Ceo eſt contra bonos mores & digne de puniſhment cõe eſt auantdit, mes nẽ cauſe de diſſranchiſement.

licana verba ſequentia dixit, viz. **I will make thy neck cracke:** Et vlterius dicto Domino Regi Certificamus, quod poſtea ſcilicet tertio die Maij An'. regni dicti Dn'ō Regis nūc duodecimo quædā ordinatio & amicabilis admonitionis inſtitutum fact' fuit per Iohannē Scobbe tunc Maiorem burgi prædicti & maiorem ptē Capital. burgenſ. burgi illius in hæc verba, viz. Nono die Maij Anno Domini 1614. **The day and yeare aboue writtē it was agreed by Iohn Stobbe Maior & ſuch other of the maiſters hereunder writtē, being aſſembled in the Counſell chāber at Plymouth, That if Maiſter Iames Bagge the elder do not, before the next ſeſſions to be holden within the Borough of Plymouth, reconcile himſelfe to the ſaid Maior and his brethren for ſuch wrongs as he hath committed againſt them, and withall faithfully promiſe to demeaſne himſelfe more orderly & temperatly for the time to come, that then he ſhalbe cleane remoued from the bench and a new Maiſter choſen in his roome:** Quæ quidē ordinatio ſiue inſtitutū factū & ſubſcriptū fuit per dictū Maiorem & nouem aliorum Capitaliū burgenſium burgi p̄d: Et vlterius dicto Domino Regi Certificamus, quod prædictus Iacobus Bagge ante prædictam proximam Seſſionem in ordinatione prædicta mentionat' non fecit aliquam talem reconciliationē ſiue promiſſionem conformationis qual. in ordinatione illa ſpecificat', licet plena noticia ordinationis prædict' immediate poſt confectionem inde, & ante prædictam proximam ſeſſionem ei dat' fuit, viz. apud Plymouth prædict': Et vlterius dicto Domino Regi Certificamus, quod poſtea ſcilicet viceſimo tertio die Februarij Anno Regni dicti Domini Regis nunc duodecimo prædictus Iacobus Bagge, continuando maleuolam diſpoſitionem & intentionem ſuā prædictam, apud Plymouth prædict' in Guyhalda burgi prædict' in p̄ſentia & auditu Ioh. Scobbe vnius Capital. burgenſium burgi prædicti, & tunc exiſten' Iuſticiar' dicti Dn'i Regis ad pacē infra burgum prædictum conſeruand', virtute lr'arum patentium prædictarum ratione Maioratus ſui burgi prædicti Anno tunc proxim' præcedent', ac in præſentia & auditu tunc Maioris burgi prædicti & diuerſorum aliorum burgenſium & inhabitantium burgi illi⁹, contumelioſe hæc Anglicana verba ſequen' de præfat' Ioh. Scobbe palam & publice falſe & ſcandaloſe dixit & propalauit, viz. **You** (prædictum Iohannem Scobbe innuendo) **are a knaue,** vbi reuera prædictus Ioh. Scobbe tota vita ſua honeſte et

Vt ſupra.

Ceo eſt repugnant, s. 3. Maij & 9. Maij.

Icy appiert que il ſerra remoue per le Maior & 9. des Maiſters & in le fine del retourne eſt alledge que fuit remoue per le Maior & Commiſſaltie que eſt repugnant.

Vt ſupra.

et laudabiliter ſe geſſerit & gubernauerit: Et vlterius dicto Domino Regi Certificamus, quod poſtea ſcilicet decimo ſeptimo die Decembr' iã vltimo p̃terit' tunc Maiore dicti burgi & diuerſis Capitalibus burgenſibus burgi prædicti apud Plymouth prædictam in domo Elemozinar' burgi prædicti ibidem congregat' exiſten' ad exigend' & recipiend' compotũ gardianorũ pauperũ burgi prædicti ſicut temporibus ante-actis de tempore cuius contrarij memoria hominum non exiſtit vſitat' fuerit, prædictus Iacobus Bagge adtunc & ibidem in p̃ſentia & auditu dicti Maioris & aliorum Capitalium burgenſ. prædictorum ſine aliqua cauſa rationabili palam & publice dixit cuidam Thomæ Sherwill ibidem tunc p̃ſenti & vni duodecim Capital. burgenſ. burgi prædicti adtunc & per ſpacium decem annorum p̃antea exiſten' hæc falſa & ſcandaloſa verba ſequen', viz. **You** (prædictum Thomam Sherwill innuendo) **are a ſeditious fellow**, vbi reuera prædictus Thomas Sherwill de quocunque tali crimine ſeditionis ſemper inſuſpectus vixit & ſeipſum de tempore in tempus tam in officio Maioratus burgi prædicti quam in loco & officio Capitalis burgenſ. burgi illius honeſte, diſcrete ſummaque integritate ſe geſſerit & gubernauerit: Et vlterius dicto Domino Regi Certificamus, quod cum idem Dominus Rex die Ianuarij anno Regni ſui duodecimo ſupradicto, apud Weſtm' in Com' Midd', de aduiſamento Dominorũ de priuato conſilio ſuo huius regni Angl' ordinauerat & mandauerat per publicam proclamationem ſuam & per lr'as proprijs manibus diuerſorum dn'orũ de priuato conſilio ſuo ſignatas, quod nullus nec alia perſona quecunque mactaret aut venditioni exponeret aliquam carnem pro victualibus tempore Quadrageſimæ tunc prox. futur' contra leges aut ſtatuta huius regni Angl', Et quod omnes Maiores & alij Capital. officiarij in burgis & villis incorporat' infra hoc regnum Angl' in initio prædicti temporis Quadrageſimæ tunc prox. futur' vel antea, cauſarent omnes Caupones, Victualar', Hoſpites Anglice **Inkeepers**, Cauponar' Anglice **keepers of Ordinarie tables**, & Tabernarios Anglice **Ale-houſe-keepers**, infra præcinctum iuriſdictionis ſuæ obligari dicto Domino Regi per ſcriptum obligatorũ, quod ipſi non obſonarent Anglice **ſhould not dreſſe** aliquam carnem pro victualibus durante dicto tempore Quadrageſimæ tunc prox. futur': Cũque etiam poſtea ſcilicet viceſimo die Februarij Anno duodecimo ſupradicto quidã Iohannes Clemẽt adtunc & adhuc Maior burgi de Plymouth prædict' iuxta officij

Vt ſupra.

ſui

ſui debitum et in obedientia dict' ordinationis & mandati dicti Domini regis mandauerat omnibus victualarijs, Cauponibus, hoſpitibus, Cauponarijs, & tabernarijs prædictis infra præcinctum burgi prædicti, quod ipſi deuenirint obligat' per ſcript' ſuum obligator' ad vſum dicti Domini Regis ſecundum tenorem & exigentiam prædictæ ordinationis & mandati dicti Domini Regis, & debitam executionem ordinationis prædicte in ea parte requirebat & efficere conatus fuit infra burgum præd', præfatus Iacobus Bagge præmiſſorum ſatis ſciens, & maleuolam diſpoſitionem & intentionem ſuam prædictam continuando, prædict' viceſimo die Februarij Anno duodecimo ſupradicto, apud Plimouth prædict', debitam executionem ordinationis prædict' & præd' mandati dicti Domini Regis impediri & euacuare conatus fuit & attemptabat, & ea intentione eodem viceſimo die Februarij apud Plymouth Prædictã, diuerſis inhabitantibus burgi præd' & alijs ligeis dicti Domini Regis ibidem exiſten', & communicationem cum pref. Iacobo Bagge de & ſuper negotio illo adtunc & ibidẽ habentibus, palam & publicè dixit & propalauit hæc Anglicana verba ſequent', viz. **Maiſter Maior** (præfatum Iohan' Clement innuendo) **doth more herein than he need, and more than he can well anſwere**, innuendo qd dictus Iohannes Clement in requirendo prædictos Caupones, victualarios, hoſpites, Caponarios, & tabernarios deuenire obligat' ad vſum dicti dom' regis ſecundum prædictam ordinationem & mandatum dicti Domini Regis fecerat plus quã facere opus fuit et plus quam benè reſpõdere potuit, ratione cuius quidã propalationis diuerſi Caupones, Victualarij, Hoſpites, Cauponarij, & Tabernarij, infra burgũ predictum inhabitantes, penitus recuſabant obligari dicto Domino Regi ſecundum prædictam ordinationem & mandatũ dicti dn'ĩ Regis: Et vlterius Certificamus, qd prædictus Maior et cõmunitas burgi de Plymouth & prædeceſſores ſui de tẽpore cui' contrarij memoria hominũ non exiſtit, haberẽt & habere cõſueuerũt infra burgũ prædict' quandam cuſtumã vini communitèr vocat' wyne weight al's wine wyte, ſolubil' per quemcunque tabernariũ vinũ vendent' infra burgum præd. de qua quidẽ cuſtuma vini predicti Maior & Cõmunitas de toto tẽpore ſupradict' quietè & pacifice ſeiſit' fuer' quouſq; pred' Iac. Bagge viceſim' nono die Nouẽb. an' regni dicti dom' Reg. nunc Angl. quarto, apud Plimouth pred' prefidie & malicioſe practizabat cum quodã Will. Bently & Thoma Lyde tabernarijs & vini venditorib⁹ infra burg' prædictum exiſtẽ, eis perfide reuelando diuerſa ſecreta conſilia,

Ceo neſt cauſe de diſfranchiſemẽt ſans queſtion: auxy le innuendo eſt idle & vaine.

Ilz nont alledge que la fuit Corporation de tempz dont &c.

Ceux parols ſont trop generall.

concernentia Communē vtilitat' burgi p̄d, & ipſos Wil'& Thomam adtunc & ibid' perſuadebat, quod ipſi non amplius ſoluerent prædictam Cuſtumam vini vocat' wyne weight alias wyne wyte, nec aliquam firmam aut denariorum ſummam pro inde p̄f. Maiori & Cōmunitati, quo quidem viceſimo nono die Nouembris Anno quarto ſupradicto prædictus Iacobus Bagge tunc exiſtens vnus duodecim Capital. burgenſ. de communi conſilio burgi prædicti, apud Plymouth prædict. perfide & malicioſe [a] dixit prefat' Willielmo Bently & Thomæ Lyde hæc Anglicana verba ſequen', viz. **You need not to pay the money** (innuendo quandam firmam per ipſos Thomam & Willielmū pro cuſtuma prædict' ante tunc pref. Maiori & Communitat' ſolut') **for the wyne weight any longer except you liſt, for it is not due vnto them,** [b] ratione quorū quidē perfidioſorum & malitioſorum verborum predicti Willielmus Bently & Thomas Lyde firmam predict' ſoluere penitus recuſabant et adhuc recuſant, Et ratione inde diuerſæ lites & controuerſiæ ortæ ſunt & poſt hac oriri veriſimiles ſunt int' pref. Will. Bently & Thomam Lyde & pref. Maiorem & Communitatem pro cuſtumis vini predicti & firma predicta ad damnum & magnum preiudiciū pref. Maioris & Cōmunitatis: Et vlterius dicto Domino Regi certificamus, quod pred. Iacobus Bagge primo die Maij Anno Regni Domini Regis nunc Angl' duodecimo & diuerſis alijs diebus & vicibus tunc preantea apud Plymouth pred. perfidioſe dixit diuerſis inhabitātibus burgi predicti & alijs ligeis dicti Domini Regis ſuper communicationem inter eos & prefatum Iacobum tunc prehabit' de & concernen' libertatibus & priuilegijs burgi predicti, quod ipſe idem Iacobus Bagge [c] ſubuerteret & euacueret Cartam Anglice **the Charter** burgi predicti, innuendo Cartam predictam per pref. nuper reginam Elizabetham prefat' Maiori & communitati vt prefertur conceſſam. Et qd ipſe idem Iacobus libertates & priuilegia burgi p̄d altercaret Anglice **would call in queſtion,** & eadem priuilegia & libertates ſubuerteret: Et vlterius dicto Dn'o regi certificamus, qd poſtea ſcilicet decimo ſeptimo die Aprilis iam vltimo preterito p̄d Iacobus Bagge in dicto breui nominatus ex cauſis predictis per Maiorem et communitat' burgi pred' ab officio vnius capital. burgenſium & magiſtratuum burgi predicti amotus fuit.

Iohannes Clement
Maior.

[a] *Ceo fuit forſque ſon opinion que coment que ſoit faux neſt cauſe de diſfranchiſment & ſon opinīō ne poit eſte preiudice a lour droit le innuendo eſt vaine et idle.*

[b] *Vncore remedy giſt pur cē dutie ſilz ont droit a ceo per la ley.*

[c] *Non officit affectus, niſi ſequatur effectus: & poet eſte que le Charter fuit void in ley, ou que fuit procure par le meinder nūber des burgeſſes, et donques poet eſte remoue, & iſſint il bien poit iuſtifie ceux parols.*

Super

Super tota materia & ex cauſis prædictis fuit reſolue, per le Court, que la ne fuit alcun iuſt cauſe de amotion, et pur ceo per agard de Court briefe fuit direct al Maior et Comminaltie a luy reſpoyer.

Et in ceſt caſe. ¶ 1. Fuit reſolue, que a ceſt Court del Banke le Roy appent Authoritie non ſolement a correcter Errors in iudiciall proceedings, mes auters Errors et miſdemeanors extraiudicial, tendants al breach de Peace, ou oppreſſion des Subiects, ou al raiſing de faction, controuerſie, debate, ou al alcun manner de miſgouernment, iſſint que nul tort et iniurie, ou publique ou priuate, poet eſte fait, mes que ceo ſerra reforme ou punie per le due courſe del ley.

Pur le generall erudition de ceſt z autiel caſes, tout ceo que fuit dit en le argument de ceſt caſe fuyt diuide in ceux queſtions. 1. Queux fueront ſufficient cauſes a diſfranchiſer vn Citizen, Freeman, ou Burgeſſe dalcun Citie ou Borough incorporate, et a diſcharger luy de ſon Freedome ou Libertie, et queux nemy. 2. Coment, et per queux, et en quel manner tiel Cityzen ou Burgeſſe ſerra diſfraunchiſe. 3. Si le retorne de ſon amotion ou diſfraunchiſement import ſufficient matter mes eſt faux, quel remedie ſerra pur le partie greeue in tiel caſe.

¶ Quant al primer fuit Reſolue, que le clauſe dun diſfranchiſement couient eſte foundue ſur Act que eſt encounter le duetie dun Citizen ou Burgeſſe, et al preiudice del bien publique del Citie ou Borough dont il eſt Citizen ou Burgeſſe, et encounter ſon ſerement que il priſt quant il fuit iure vn Freeman del Citie ou Borough, car coment que vn ne ſerra charge in alcun Court Judiciall pur le breach dun generall ſerement que il priſt quant vn deueign Officer, Miniſter, Citizen, Burgeſſe, &c. vncore ſi lact que il fait ſoit inconter le dit duty et truſt de ſon Freedome, et al preiudice del Citie ou Borough, et auxy enconter ſon ſerement, ceo inforce mult le cauſe de ſon amotion, et eſt vn condition in ley tacitè annexe a ſon Freedome ou Libertie, que ſil infreint il poit eſtre diſfranchiſe: Mes parols de contempt ou contra bonos mores, coment que ſoient enconk

le chiefe Officer ou ſes freres, ſont bone cauſes a luy punier, come a committer luy tanque il ad troue ſuretie de ſon bone port, mes nemy a diſfraunchiſer luy : Iſſint ſil intende ou indeauour de luy meſme, ou conſpire oue auters, a faire choſe encounter le duetie ou truſt de ſon Freedome, et al preiudice del bien publique del Citie ou Borough, mes il ne execute le choſe, ceo eſt bone cauſe a punyer luy come eſt auantdit, mes nemy a diſfraunchiſer luy, car Non officit conatus niſi ſequatur effectus, et Non officit affectus niſi ſequatur effectus. Et le reaſon et cauſe de ceo eſt, que quaunt home eſt vn Freeman dun Citie ou Borough, il ad Franktenement en ſon Freedome pur ſon vie, et oue auters in lour politique capacitie ad inheritaunce en les terres del dit Corporation, et intereſt en lour biens, et peraduenture ceo concerne ſon Trade et meanes de viuer, et ſon Credite et Eſtimation, et pur ceo le matter que ſerra cauſe de ſon diſfranchiſement, couient eſtre vn Act ou Fait, et nemy conation ou enterprize dont il poit repent deuaunt lexecution de ceo, et dont nul preiudice inſue : et ceux queux ont Offices de truſt et confidence ne forfeitẽ eux per conations et intentions de faire Acts, coment que ils declarẽ eux per expreſſe parols, ſinon que le Act meſme enſuera, come ſi vn que ad le cuſtodie dun Parke dirra que il voile tuer tout le game deins ſon cuſtodie, ou que il voet ſuccider tants des arbres deins le Parke, mes ne tua aſcun del game ne ſuccide aſcun des arbres, ceo neſt aſcun forfeiture, & ſic de ſimilibus, car in touts tiels caſes, ou couient eſtre fact, ou tiel negligence que tant amount, ceſtaſcauoir, quant deſtruction del game &c. enſue. Si Eueſque, Archdeacon, Parſon &c. abate touts les arbres, ceſt bone cauſe de depriuation, et oue ceo accord 2. Hen. 4. 3. Iſſint ſi Prior alien le terre que il ad in iure Domus ſuæ, ceſt cauſe de depriuation, come appiert 9. E. 4. 34. Si Prior fait dilapidation, ceſt bone cauſe a luy depriuer, come eſt tenus 29. E. 3. 16. 20. Hen. 6. 36. Mes ſi ſoit forſque conation ou enterprize ſauns Act fait, in nul de ceux caſes eſt aſcun cauſe de depriuation, car in ceux caſes Voluntas non reputatur pro facto : Et ſi contempt

(ſoit

(soit ceo de omission ou commission) serra bone cause a disfranchiser; le melieur Citizen ou Burgesse poet estre a vn temps ou auter disfranchise, que serra grand cause de faction et contention in Cities et Burghes.

¶ Quant al 2. fuit resolue, que nul frankhome dascun incorporation poet ẽe disfranchise p corporation, sinõ q̃ ils ont authority a ceo faire, ou p expresse parols de charter, ou p p̃scription; mes ils nont authority ne q̃ p chte ne q̃ per p̃scription, donq̃ il couient estre convict p le course del ley deuaunt que il poet estre remone, & ceo appiert per Magna Charta cap. 29. Nullus liber homo capiatur vel imprisonetur, aut dissesisietur de libero tenemento suo, vel liberatus; vel liberis consuetudinibus suis &c. nisi per legale iudicium parium suorum, vel per legem terræ. & si le incorporatiõ ont power per Charter ou p̃scription de amouer luy pur reasonable cause, ceo serra per legem terræ, mes ils nont tiel power, il couient estre convict per iudicium parium suorum &c. come si ascun citizen ou freeman soit attaint de forgerie, ou periury, ou conspiracie, al suit le Roy &c. ou dascun auter crime per que il est deuenus infamous, sur tiel attainder ils poient luy remone, issint si soit convict dascun tiel offence que est inconter le duety et trust de son freedome et al publique p̃iudice del City ou Borough dont il est free et inconter son serement, come si auoit arse ou defface les Chtes ou euidences del City ou Burgh, ou rase ou corrupt eux, et soit de ceo convict & attaint, ceux & auters semblables sont bone causes a luy remouer. Et coment que ils ont loial authoritie, ou per Charter ou per p̃scription, a remouer ascun del freedome, et que ils ont iust cause a luy remouer, vncore si appiert per le returne, que ils ont proceed vers luy sans oyer luy a responder a ceo que est obiect, ou que il ne fuit reasonablement garnie, tiel amotion est voide et ne liera l'partie, quia quicunque aliquid statuerit parte inaudita altera, æquum licet statuerit, haud æquus fuerit, et tiel remouer est inconter Iustice & droit.

¶ Quant al 3. question, ils ont power p Charter ou p̃scrip̃, et disfranchise vn, et puis les Iudges del bank le roy agard̃ briefe al eux a luy resoyer ou a signifier cause &c. et ils certifiont sufficient cause a luy remouer mes ceo est faux, donque le court ne poet agarder br̃e a luy resoyer, ne

aſcun iſſue poit eſte pꝛiſe ſur ceo, pur ceo que les parties ſõt ſtrangers & nont iour in Court: mes le partie greeue bien poet auer action ſur le ſpeciall matter vers ceux queux ont fait le Certificat, et auerre ceo dẽe faux, et ſi ſoit troue p̃ luy et obteine Judgement vers eux, iſſint que poet appeir aux Juſtices que les cauſes del retourne ſont faux, donq̃ ils agardeꝭ bꝛiefe de reſtitution, et ceo eſt pꝛoue p̃ le reaſon del liure in 9.H.6.fol.44. ou eſt tenus que ſur Corpus cum cauſa, ſi le cauſe retoꝛne ſoit ſufficient mes in verity eſt faux, le Court doit remander le pꝛiſoner, et il eſt a nul miſchiefe, car ſils nont authoꝛitie, ou le cauſe ſoit faux, il poit auer bꝛiefe de Faux impꝛiſonment (V.Fitzh.Tit' Corpus cum cauſa p. 2. le dit caſe de 9.H.6.44. bien abꝛidge) iſſint in lauter ſur tiel faux retoꝛne le partie grieue poet auer ſpeciall action ſur ſon caſe come eſt auantdit. Auxy ſi le partie grieue que iſſint eſt diſfranchiſe, ſoit pur les cauſes de ſon diſfranchiſement commit al pꝛiſon, ou ſi ſon ſhoppe ſoit ſhut vp, ou ſil oue foꝛce ſoyt remoue hoꝛs de lour aſſembly &c. in ceux & autiels caſes il poit auer action de Faux impꝛiſonment, ou action de Treſpas quare domum fregit, ou de aſſault et batterie, et in ceux actions les cauſes de ſon diſfranchiſement couient eſte plede, & ſerra decide ſolonque le ley, 8.E.3.437. 8.Aſſ.29.31. Silay home ſoit patron dun hoſpital il poit viſiter ceo et diſpoſe ou depꝛiue le Maiſter ſur bone cauſe, mez ſil ſoit depꝛiue ſans iuſt cauſe et per colour de ceo ſoit ouſte, il auera Aſſiſe, pur ceo que il nad auter remedie: mes ſi le Ordinarie depꝛiue vn Maiſter que eſt Eccleſiaſtical ſans cauſe, il nauera Aſſiſe, car il ad auter remedie per Appeale, V.6.H.7.14.F.N.B.4.B.27.E.3.85.10. Elizabethæ Dyer 273.

¶ Auxy fuit reſolue, que tiel retoꝛne de diſfranchiſement couient eſtre certaine, iſſint que ſufficient matter poet appearer al Court a diſfranchiſer le partie, & eo potius pur ceo que le partie ne poit auer reſpons a ceo, come eſt auantdit.

¶ Darreinment fuit reſolue, que pur nul des cauſes cõteigne in le dyt Certificat, le dyt James Bagge per la ley doit eſtre remoue. et pur ceo per tout le Court bꝛiefe fuit agard a luy reſtoꝛer a ſon franchiſe et freedome, et iſſint fuit fait.

Nota

Nota Lecteur, in le argument de ceſt caſe mult fuit dyt a exhorter Citizens & Burgeſſes a doner obedience et reuerence aux chiefe Magiſtratez in lour Cities et Burghes, p̄ ceo que ils deriuont lour authority del Roy, et Obedientia eſt Legis eſſentia, et pur ceo appiert deuant coment ils ſerra punie queux committont aſcun contempt vers eux: Mes le principal queſtion de ceſt caſe fuit, queux actes fueront ſufficent cauſes in ley pur le diſfranchiſement daſcun Citizen ou Burgeſſe &c.

FINIS.

Caſuum iſtius libri ſeries.

1	Seignior de la Wares caſe,	*En Parliamẽt.* 39. *Eli.* *Fol.* 1.	
2	Auditor Curles caſe,	*Hill.* 7. *Iacobi*	2.
3	Sir Iohn Heydons caſe,	*Trin.* 10. *Iacobi*	5
4	Priddle & Nappers caſe,	*Mich.* 10. *Iacobi*	8.
5	Doctor Grants caſe,	*Paſch.* 11. *Iacobi*	15.
6	Sir Henry Neuils caſe,	*Mich.* 11. *Iacobi*	17.
7	Doctor Ayrays caſe,	*Hill.* 11. *Iacobi*	18.
8	Henry Harpurs caſe,	*Trin.* 12. *Iacobi*	23.
9	Henry Pigots caſe,	*Trin.* 12. *Iacobi*	26.
10	Alexander Powlters caſe,	*Trin.* 12. *Iacobi*	29.
11	Metcalfs caſe,	*Mich.* 12. *Iacobi*	38.
12	Richard Godfreys caſe,	*Mich.* 12. *Iacobi*	42.
13	Richard Lidfords caſe,	*Mich.* 12. *Iacobi*	46.
14	Caſe des Tailleurs de Ipſwich,	*Mich.* 12. *Iacobi*	53.
15	Edward Sauels caſe,	*Mich.* 12. *Iacobi*	55.
16	Benthams caſe,	*Mich.* 12. *Iacobi*	56
17	Doctor Forſters caſe,	*Mich.* 12. *Iacobi*	*ibid.*
18	Magdalen Colledge caſe,	*Paſch.* 13. *Iacobi*	66.
19	Lewis Bowles caſe,	*Paſch.* 13. *Iacobi*	79.
20	Le caſe de Monopolies,	*Trin.* 44. *Eliz.*	84.
21	Le Countee de Deuonſhires caſe,	*Hill.* 4. *Iacobi*	89.
22	Iames Bagges caſe.	*Trin.* 13. *Iacobi*	39.

Nomi-

Nomina tam Iuſticiariorum vtriuſque banci & Baronum Scaccarij, quam Seruientium ad legem tempore editionis vndecimi huius Commentarij.

Del banke le Roy.
- Edwardus Coke,miles.
- Iohannes Crooke,miles.
- Iohannes Doderidge,miles.
- Robertus Houghton,miles.

Del cõmon banke.
- Henricus Hobart,miles.
- Petrus Warburton,miles.
- Humfridus Winch,miles.
- Auguſtinus Nichols,miles.

Del Eſchequer.
- Laurentius Tanfield,miles.
- Georgius Snigge,miles.
- Iacobus Altham,miles.
- Edwardus Bromeley,miles.

Seruientes ad legem.
- Henricus Mountague,miles.
- Iohannes Sherley.
- Thomas Harris.
- Robertus Barker.
- Richardus Hutton.
- Iohannes Dauis,miles.
- Randallus Crew,miles.
- Robertus Hatcham,miles.
- Georgius Wyld.
- Willielmus Towſe.
- Leonardus Bawtree.
- Henricus Finch.
- Thomas Chamberlaine.
- Franciſcus More.
- Richardus Athow.
- Iohannes More.
- Franciſcus Haruey.
- Charolus Chyborne.
- Thomas Richardſon.

FINIS.

CERTAIN

SELECT CASES

IN

L A VV,

REPORTED:

BY

Sir EDVVARD COKE, Knight,

LATE

Lord CHIEF JUSTICE

OF

ENGLAND

And one of His Majesties Council of STATE.

Translated out of a Manuscript written with his own hand.

Never before Published.

With two Exact Tables, the one of the Cases, and the other of the Principal Matters therein contained.

LONDON,
Printed by *Tho. Roycroft* for *J. Sherley*, *H. Twyford*, and *Tho. Dring*, and are to be sold at their Shops, at the *Pelican* in *Little-Brittain*, in *Vine-Court Middle Temple*, and at the *George* in *Fleetstreet*. 1659.

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TO THE READER.

READER,

IT may ſeem altogether an unneceſſary work to ſay any thing in the praiſe and vindication of that Perſon and his Labours, which have had no leſs then the generall approbation of a whole Nation convened in Parliament: For if King THEODORICK in *Caſſiodore* could affirme, *Neque enim dignus eſt a quopiam redargui qui noſtro judicio meretur abſolvi*, That no man ought to be reproved whom his Prince commends. How much rather then ſhould men forbear to cenſure thoſe and their Works which have had the greateſt allowance and atteſtation a Senate could give, and to acquieſce and reſt ſatisfied in that judgement? Such reſpect and allowance hath been given to the learned Works of the late Honourable and Venerable Chiefe Juſtice, Sir EDWARD COKE, whoſe Perſon in his life time was reverenced as an Oracle, and his Works (ſince his deceaſe) cyted as Authentick Authorities, even by the Reverend Judges themſelves. The acceptance his Books (already extant) have found with all knowing Perſons, hath given me the confidence to commend to the publick view ſome Remains of his, under his owne hand-writing, which have not yet appeared to the World, yet (like true and genuine Eaglets) are well able to behold and bear the light: They are of the ſame Piece and Woofe with his former Works, and in reſpect of their owne native worth, and the reference they bear to their Author, cannot

be too highly valued: Though, in reſpect of their quantity and number, the Reports are but few; yet, as the skilfull Jeweller will not loſe ſo much as the very filings of rich and precious mettals; and the very fragments were commanded to be kept where a Miracle had been wrought, *Propter miraculi claritatem & evidentiam*: So theſe ſmall parcels, being part of thoſe vaſt and immenſe labours of their Author, great almoſt to a Miracle (if I may be allowed the compariſon:) were there no other uſe to be made of them (as there is very much, for they manifeſt and declare to the Reader many ſecret and abſtruſe points in Law, not ordinarily to be met with in other Books ſo fully and amply related) deſerve a publication, and to be preſerved in the reſpects and memories of Learned men, and eſpecially the Profeſſors of the Law; and to that end they are now brought to light and publiſhed. If any ſhould doubt of the truth of theſe Reports of Sir EDWARD COKE, they may ſee the originall Manuſcript in French, written with his own hand, at *Henry Twyfords* Shop in *Vine-Court Middle Temple*.

Farewell.

J. G.

MICH. AN. 6 JACOBI REGIS
In the Common Pleas.

Willowes Caſe.

Copyhold Fine reaſonable.

IN Treſpaſſe brought by Richard Stallon one of the Attorneys of the Court againſt Thomas Bradye (which began in Eaſter Term, An. 6 Jacobi Rot. 1845.) for breaking of his Houſe and Cloſe at Fenditton in the County of Cambridge; And the new Aſſignment was in an Acre of Paſture: The Defendant pleads that the place where, &c. was the Land and Freehold of Thomas Willowes and Richard Willowes; and that he as Servant, &c. And the Plaintiff for Replication ſaith, that the place where, was parcell of the Mannor of Fenditton, and demiſable, &c. by Copy of Court-roll in Fee-ſimple: And that the Lords of the Mannor granted the Tenements in which, &c. to John Stallon and his heirs, who ſurrendred them unto the ſaid Willowes, and VVillowes, Lords of the ſaid Mannor, to the uſe of the Plaintiff and his heirs, who was admitted accordingly, &c. The Defendant doth reſoyn, and ſaith, That well and true it is, that the Tenements in which, &c. were parcell of the Mannor, and demiſable, &c. And the ſurrender and admittance ſuch, pro ut, &c. But the ſaid Thomas Bradye further ſaith, that the Tenements in which, &c. at the time of the Admiſſion of the ſaid Richard Stallon, were, and yet are of the clear yearly value of fifty three ſhillings and four pence; And that within the ſaid Mannor there is ſuch a Cuſtome, Quod rationabilis denariorum ſumma legalis monetæ Angliæ ſuper quamlibet admiſſionem cujuſlibet perſonæ, ſive quarumcunque perſonarum tenent. vel tenent. per Dom. vel Dominos Manerii prædict. ſive per Seneſchallum, &c. ad aliquas terras ſive Tenementa Cuſtomaria Manerii prædict. ſecundum Conſuetudinem Manerii illius debetur & a tempore quo, &c. debitum fuit Dom. &c. tempore ejuſdem admiſſionis pro fine pro admiſſione illa, quod idem Dominus, vel idem Dom. prædict. vel Seneſchallus ſuus Curiæ ejuſdem Manerii pro tempore exiſten. uſus fuit, vel uſi fuerunt per totum Tempus ſupradict. in plena Curia Manerii illius pro Admiſſione ejuſdem perſonæ, ſeu earundum perſonarum ſic facta, aſſidere & appunctuare, Anglice, to Aſſeſſe, and appoint eandem rationabilem denariorum ſummam pro fine pro eadem Admiſſione ſic & præfertur facta, nec non ſuperinde eandem denariorum ſummam ſic aſſeſſam & appunctuatam, præfatæ perſonæ ſive perſonis ſic admiſſæ ſive admiſſis, ſolveret & ſolverent, &c. eidem Domino, &c. prædictam rationabilem denariorum ſummam pro fine, pro Admiſſione ſua prædict. ſic aſſeſſam & appunctuat. And further ſaith, That the Steward of the ſaid Mannor, at a Court holden 1. Octob. in the fourth year of the Reigne of the King that now is, admitted the Plaintiff to the Tenements, in which, &c. and aſſeſſed and ſet a reaſonable ſumm of money, that is to ſay, five pounds, ſix ſhillings, eight pence, that is to ſay, Valorem eorundem tenementorum per duos annos, & non ultra pro fine pro prædict.

dict. Admiſſione prædict. Richard. Stallon to the ſaid Lords of the Mannor to be paid: And alſo the ſaid Steward at the ſame Court did give notice and ſignifie to the Plaintiff the ſaid ſumm was to be paid to the ſaid Lords of the Mannor, &c. And further ſaith, that the ſaid VVillowes and VVillowes, afterwards, that is to ſay, the ſecond day of November, in the fourth year aforeſaid, at Fenditton aforeſaid, requeſted the ſaid Richard Stallon to pay to them five pounds, ſix ſhillings, eight pence there, for the Fine for his admittance, &c. which the ſaid Rich. Stallon, then and there utterly denied and refuſed, and as yet doth refuſe. By which the ſaid Richard Stallon forfeited to the aforeſaid Thomas and Richard VVillowes all his Right, Eſtate, &c. of and in the Tenements aforeſaid in which, &c. The Plaintiff ſurjoyneth, and ſaith, that the ſaid ſumm of five pounds, ſix ſhillings, eight pence, &c. was not rationabilis finis, as the ſaid Thomas Bradye above hath alledged, &c. upon which the Defendant doth demur in Law. And in this Caſe theſe points were reſolved by Coke chief Juſtice, VValmeſly, VVarberton, Daniel, and Foſter Juſtices, 1. And principally, If the Fine aſſeſſed had been reaſonable, yet the Lords ought to have ſet a certain time and place when the ſame ſhould be paid, becauſe the ſame ſtands upon a point of forfeiture: As if a man bargains and ſells Land to one and his heirs, upon condition that if he pay to the Bargaines or his heirs ten pounds at ſuch a place, that he and his heirs ſhall re-enter: In that caſe becauſe no time is limited, the Bargainor ought to give notice to the Bargaines, &c. when he will tender the money, and he cannot tender it when he pleaſeth, and with that agrees, 19 Eliz. Dyer 354. For a man ſhall not loſe his Land, unleſſe an expreſſe default be in him; and the Bargaineein ſuch Caſe is not tied to ſtay alwaies in the place, &c. So in the Caſe at Bar, the Copyholder is not tied to carry his Fine alwaies with him, when he is at Church, or at Plow, &c. And although that the Rejoynder is, that the Plaintiff refuſed to pay the Fine, ſo he might well do, when the requeſt is not lawfull nor reaſonable, for in all caſes when the requeſt is not lawfull nor reaſonable, the party may without prejudice deny the payment. And he who is to pay a great Fine as a 100 l. or more, it is not reaſonable that he carry it alwaies with him in his Pocket, and preſently the Copyholder was not bound to it, becauſe that the Fine was uncertain & arbitrable, as it was reſolved in Hulbarts Caſe in the fourth part of my Reports, 27. amongſt the Copyhold Caſes. 2. It was reſolved, that although the Fine be incertain and arbitrable, yet it ought to be ſecundum arbitrium boni viri: And it ought to be reaſonable and not exceſſive, for all exceſſiveneſſe is abhorred in Law, Exceſſus in re qualibet, jure reprobatur Communi; For the Common Law forbids any exceſſive diſtreſſe, as it appeareth in 41 E. 3. 26. Where a man avowed the taking of forty Sheep for 3 d. Rent, and the Plaintiff prayed that he might be amerced for the Diſtreſſe: And the Court (who is alwaies the Judge whether the Diſtreſſe be reaſonable or exceſſive) held, that ſix Sheep had been a ſufficient Diſtreſſe for the ſaid Rent, and therefore he was amerced for ſo many of them as were above ſix Sheep: And the Court ſaid, that if the Avowant ſhall have return, he ſhall have a return but of ſix Sheep: And this appeareth to be the Common Law; for the Statute of Artieuli ſuper Cartas extends only where a grievous Diſtreſs is taken for the Kings Debt. See F.N.B. 174. a. and 27. Aſſ. 51. 28. Aſſ. 50. 11 H. 4. 2. and 8 H. 4. 16. &c. Non Capiatur gravis Diſtrictio. &c. And ſo if an exceſſive or an unreaſonable Amerciament be impoſed in any Court

Fine reaſonable

Fine uncertain & arbitrable

Diſtreſſe exceſſive

Vi. F.N.B. 82. a reaſonable Aid incertain untill the Statute of Glanvi. lib. 9. fol. 70. 14 H. 4. 9. by Hill. 14 H. 4. 1. a.

Court Baron or other Court which is not of Record, the party ſhall have Moderata Miſericordia: And the Statute of Magna Charta is but an affirmance of the Common Law in ſuch point. See F.N.B. 75. Nullus liber homo amercietur niſi ſecundum quantitatem delicti. And gravis Redemptio non eſt exigenda. And the Common Law gives an Aſſiſe of Sovient Diſtreſſe, and Multiplication of Diſtreſſe found which is exceſſive, in reſpect of the multiplicity of veration. And therewith agreeth 27. Aſſ. 50, 51. Non Capiatur multiplex diſtrictio, F.N.B. 178. b. And if Tenant in Dower hath Villains, or Tenants at Will who were rich, and ſhe by exceſſive Mallages and Fines makes them poor and Beggers, the ſame is adjudged Waſt. And therewith agreeth F.N.B. 61. b. 16 H. 3. Waſt 135. and 16 H. 7. And ſee the Regiſter Judicial, fol. 25. b. Waſt lieth, in exulando Henricum, & Hermanum, &c. Villeins, Quorum quilibet tenet unum Meſſuagium & unam virgat. terræ, in Villinagio in prædict. villa de T. by grievous and intollerable Diſtreſſes: By all which it appeareth, That the Common Law doth forbid intollerable and exceſſive oppreſſing and ranſoming of Villains, whereby of Rich they become Poor: And yet it may be ſaid, that a man may do with his Villain what he pleaſeth, or with his Tenant at Will; but the Law limits the ſame in a reaſonable and convenient manner: For it appeareth, that ſuch intollerable oppreſſion of the poor Tenants is to the diſinherizin of him in the Reverſion. So in the Caſe at Bar, Although that the Fine is incertain, yet it ought to be reaſonable, and ſo it appeareth by the ſaid Cuſtome which the Defendant hath alledged. And therefore in ſuch Caſe, the Lord cannot take as much as he pleaſeth, but the Fine ought to be reaſonable according to the Reſolve of the Court in the ſaid Caſe of Hubbard in the fourth part of my Reports 37. It was reſolved, That if the Lord and Tenant cannot agree of the Fine, but the Lord demandeth more then a reaſonable Fine, that the ſame ſhall be decided and adjudged by the Court, in which any Suit ſhall be for, or by reaſon of the denying of the Fine, And the Court ſhall adjudge what ſhall be ſaid a reaſonable Fine, having regard to the quality and value of the Land, and other neceſſary circumſtances which ought to appear in pleading upon a Demurrer, or found by Verdict: And if the Fine which the Lord or his Steward aſſeſſeth be reaſonable, Let the Copyholder well adviſe himſelf before he deny the payment of it: And alwaies when reaſonableneſſe is in queſtion, the ſame ſhall be determined by the Court in which the Action dependeth: As reaſonable time, 21 H. 6. 30. 22 E. 4. 27. & 50. 29 H. 8. 32. &c. So if the Diſtreſſe be reaſonable, and the like, &c.

See Glanvil lib. 9. cap. 8. Optime, B. rationabilibus auxiliis, ita tamen moderat. ſecund. Quantitatem feodorum ſuorum & ſecundum facultates ut nemini gravidæ viderentur, &c. Vide Bracton. 84. b. rationab. relev. 1. quod rationem & menſuram non excedat. and ſee him there 86. optime, &c.

Vide 14 H. 4. 4. by Hill.

Bracton l. 2 fo. 51. Quam longum debet eſſe tempus non definitur in jure, ſed pendet ex juſticianorum diſcretione.

It was reſolved, That the ſaid Fine in the Caſe at the Bar was unreaſonable, viz. To demand for a Cottage and an acre of Paſture, five pounds, ſix ſhillings eight pence, for the Admittance of a Copyholder in Fee-ſimple upon a Surrender made; For this is not like to a voluntary Grant, as when the Copyholder hath but an Eſtate for life, and dieth, Or if he hath an Eſtate in Fee-ſimple, and committeth Felony, there Arbitrio Dom. res eſtimari debet; but when the Lord is compellable to admit him to whoſe uſe the Surrender is, And when Ceſtui que uſe is admitted, he ſhall be in by him who made the Surrender, and the Lord is but an Inſtrument to preſent the ſame: And therefore in ſuch Caſe, the value of two years for ſuch an Admittance is unreaſonable, eſpecially when the value of the Cottage and one acre of Paſture is a Rack, at fifty three ſhillings by the year.

5. It was reſolved, That the Surjoynder is no more then what the Law

Law ſaith. For in this Caſe in the Iudgment of the Law, the Fine is unreaſonable; and therefore the ſame is but ex abundanti: and now the Court ought to judge upon the whole ſpeciall matter; And for the Cauſes aforeſaid, Iudgment was given for the Plaintiff.

And Coke chief Iuſtice ſaid in this Caſe, That where the uſage of the Court of Admiralty is to amerce the Defendant for his default by his diſcretion, as it appeareth in 19 H.6.7. That if the Amerciament be outrageous and exceſſive, the ſame ſhall not bind the party, and if it be exceſſive or not, it ſhall be determined in the Court in which the Action ſhall be brought, for the levying of it: And the Writ of Account is againſt the Bayliff, or Guardian, Quod reddat ei rationabilem Computum de exitibus Manerii. And the Law requireth a thing which is reaſonable, and no exceſſe or extremity in any thing.

II. Mich. 6 Jacobi, in the Common Pleas.

Porter and Rocheſters Caſe. 2 Brownl. 2.

The Statute of 23 H.8. of citing out of Dioces.

THis Term Lewis and Rocheſter who dwelt in Eſſex within the Dioces of London, were ſued for ſubſtraction of Tithes growing in B. within the County of Eſſex, by Porter, in the Court of the Arches of the Biſhop of Canterbury in London. And the Caſe was, That the Archbiſhop of Canterbury hath a peculiar Juriſdiction of fourteen Pariſhes, called a Deanry, exempted from the Authority of the Biſhop of London, whereof the Pariſh of S. Mary de Arcubus is the Chief: And the Court is called the Arches, becauſe the Court is holden there: And a great queſtion was moved, If in the ſaid Court of Arches holden in London within his Peculiar, he might cite any dwelling in Eſſex for ſubſtraction of Tithes growing in Eſſex; Or if he be prohibited by the Statute of the twenty third year of King Henry the eighth, cap. 9. And after that the matter was well debated as well by Councell at the Bar, as by Dr. Ferrard, Dr. James, and others in open Court, and laſtly, by all the Iuſtices of the Common Pleas, , A Prohibition was granted to the Court of Arches. And in this Caſe divers Points were reſolved by the Court.

1. That all Acts of Parliament made by the King, Lords, and Commons of Parliament are parcell of the Laws of England, and therefore ſhall be expounded by the Iudges of the Laws of England, and not by the Civilians and Commoniſts, although the Acts concern Eccleſiaſticall and Spirituall Juriſdiction; And therefore the Act of 2 H.4.cap.15. by which in effect it is enacted, Quod nullus teneat, doceat, informet, &c. clam, vel publice aliquam nefandam opinionem contrariam fidei Catholicæ ſeu determinationi Eccleſiæ ſacro-ſanctæ, nec de hujuſmodi ſectis, & nephandis Doctrinis Conventiculas faciat: And that in ſuch Caſes, the Dioceſſan might arreſt and impriſon ſuch Offender, &c. And in 10 H.7. the Biſhop of London commanded one to be impriſoned, becauſe that the Plaintiff ſaid that he ought not to pay his Tithes to his Curat: and the party ſo impriſoned brought an Action of Falſe Impriſonment againſt thoſe who arreſted him by the commandment of the Biſhop; and there the matter is well argued, What words are within the ſaid Statute, and what without the Statute: So upon the ſame Statute it was reſolved in 5 E.4. in Keyſars caſe in the Kings

Kings Bench, which you may see in my Book of Presidents: And so the Statutes of Articuli Cleri, de Prohibitione regia; De Circumspecte agatis, of 2 E.6.cap.13. and all other Acts of Parliament concerning Spirituall Causes, have alwaies been expounded by the Judges of the Common Law: as it was adjudged in Woods Case, Pasch. 29 Eliz. in my Notes, fol.22. So the Statute of 21 H. 8. cap. 13. hath been expounded by the Judges of the Realm concerning Pluralities, and the having of two Benefices: Common Laws and Dispensations, see 7 Eliz.Dyer 233. The Kings Courts shall adjudge of Dispensations and Commendams: See also 17 Eliz. Dyer 251. 14 Eliz. Dyer 312. 15 Eliz. Dyer 317. 18 Eliz. Dyer 352. and 347. 22 Eliz. Dyer 377. Construction of the Statute cap.12. Smiths Case, concerning Subscription which is a meer Spirituall thing. Also it appeareth by 22 Eliz. Dyer 377. That for want of subscription the Church was alwaies void by the said Act of 23 Eliz. and yet the Civilians say, that there ought to be a Sentence Declaratorie, although that the Act maketh it void.

2. It was resolved by Coke chief Justice, Warberton, Daniel, and Foster Justices, That the Archbishop of Canterbury is restrained by the Act of 23 H.8.cap.9. to cite any one out of his own Dioceſſe, or his Peculiar Jurisdiction, although that he holdeth his Court of Arches within London. And first it was objected,

That the Title of the Act is; An Act that no person shall be cited out of the Dioces where he or she dwelleth, except in certain Cases: And here the Archbishop doth not cite the said Party dwelling in Essex, out of the Dioceſſe of London, for he holdeth his Court of Arches within London.

2. The Preamble of the Act is, Where a great number of the Kings Subjects dwelling in divers Dioceſſes, &c. And here he doth not dwell in divers Dioceſſes.

3. Far out of the Dioceſſe where such men, *&c.* dwell, and here he doth not dwell far out, *&c.*

4. The body of the Act is, No manner of person shall be cited before any Ordinance, *&c.* out of the Dioceſſe or peculiar Jurisdiction where the person shall be inhabiting, *&c.* And here he was not cited out of the Dioces of London. To which it was answered and resolved, That the same was prohibited by the said Act for divers Causes.

1. As to all the said Objections, One answer makes an end of them all: For Dioceſis dicitur distinctio, vel divisio, sive gubernatio, quæ divisa, & diversa est ab Ecclesia alterius Episcopatus, & Commissa Gubernatio in unius; and is derived a Di. quod est duo & electio, id est, seperatio, quia seperat duas Jurisdictiones: So Dioces signifies the Jurisdiction of one Ordinary seperated and divided from others; And because the Archbishop of Canterbury hath a peculiar Jurisdiction in London, exempt out of the Dioces or Jurisdiction of the Ordinary or Bishop of London: For that cause it is fitly said, in the Title, Peramble, and body of the Act, That when the Archbishop sitting in his exempt Peculiar in London, cites one dwelling in Essex, he cites him out of the Dioces or Jurisdiction of the Bishop of London, ergo he is cited out of the Dioces: And in the clause of the penalty of ten pounds, It is said, out of the Dioces, or other Jurisdiction where the party dwelleth, which agreeth with the signification of Dioces before. And as to the words, Far off, *&c.* they were put in the Preamble, to shew, the great mischief which was before the Act: As the Statute of 32 H. 8. cap.33. in the Preamble, it is Disseisins with strength; and the body

Preamble of private Acts

of the Act saith, such Disseisor, yet the same extendeth to all Disseisors, but Disseisin with force was the greatest mischief, as it is holden in 4. and 5 Eliz. Dyer 219. So the Preamble of the Statute of West. 2. cap. 5. is, Heirs in Ward, and the body of the Act is, Hujusmodi præsentat. as it is adjudged in 44 E. 3. 18. That an Infant who hath an Advowson by discent and is out of Ward, shall be within the remedy of the said Act, but the Frauds of the Guardians was the greater mischief. So the Preamble of the Act of 21 H. 8. cap. 15. which gives falsifying of Retoveries, recites in the Preamble, That divers Lessees have paid divers great Incomes, &c. Be it enacted, That all such Termors, &c. and yet the same extends to all Termors: and yet all these Cases are stronger then the Case at Bar, for there that word (such) in the body of the Act referreth the same to the Preamble, which is not in our Case.

2. The body of the Act is, No manner of person shall be hencefoyth cited before any Ordinary, &c. out of the Dioces or peculiar Jurisdiction where the person shall be dwelling: And if he shall not be cited out of the Peculiar before any Ordinary a Fortiori, the Court of Arches which sits in a Peculiar, shal not cite others out of another Dioces: And these words, Out of the Dioces, are to be meant out of the Dioces or Jurisdiction of the Ordinary, where he dwelleth; but the exempt Peculiar of the Archbishop is out of the Jurisdiction of the Bishop of London, as S. Martins, and other places in London, are not part of London, although they are within the circumference of it.

3. It is to be observed, That the Preamble reciting of the great mischief, recites expressly, That the Subjects were called by compulsary proces to appear in the Arches, Audience, and other high Courts of the Archbishoprick of this Realm; So as the intention of the said Act was to reduce the Archbishop to his proper Dioces or peculiar Jurisdiction, unlesse it were in five Cases.

1. For any Spirituall Offence or cause committed, or omitted contrary to the right and duty by the Bishop, &c. which word (omitted) proves that there ought to be a default in the Ordinary.

2. Except it be in case of Appeal and other lawfull cause wherein the party shall find himselfe greived by the Ordinary after the matter or cause there first begun; ergo the same ought to be first begun before the Ordinary.

3. In case that the Bishop of the Dioces, or other immediate Judge or Ordinary dare not, or will not convent the party to be sued before him, where the Ordinary is called the immediate Judge, as in truth he is; and the Archbishop unlesse it be in his own Dioces (these speciall Cases excepted) mediate Judge, scil. by Appeal, &c.

4. Or in case that the Bishop of the Dioces, or the Judge of the place within whose Jurisdiction, or before whom the Suit by this Act should be begun and prosecuted be party directly or indirectly to the matter or cause of the same suit; Which clause in expresse words is a full exposition of the body of the Act, scil. That every suit (others then those which are expressed) ought to be begun and prosecuted, before the Bishop of the Dioces, or other Judge of the same place.

5. In case that any Bishop or any inferiour Judge having under him Jurisdiction, &c. make request or instance to the Archbishop, Bishop, or other inferiour Ordinary or Judge, and that to be done in cases only where the Law Civill or Common doth affirm, &c. By which it fully appeareth, That the Act intendeth, That every Ordinary and

Ecclesiasticall

Eccleſiaſticall Judge ſhould have the Conuſance of Cauſes within their Juriſdiction, without any Concurrent Authority or Suit by way of prevention: And by this, the Subject hath great benefit as well by ſaving of travell and charges to have Juſtice in his place of habitation, as to be judged where he and the matter is beſt known; As alſo that he ſhall have many Appeals as his Adverſary in the higheſt Court at the firſt. Alſo there are two Proviſoes which explains it alſo, ſcil. That it ſhall be lawfull to every Archbiſhop to cite any perſon inhabiting in any Biſhops Dioceſſe within his Province, for matter of Hereſie, (which were a vain Proviſo, If the Act did not extend to the Archbiſhop: But by that ſpeciall Proviſo for Hereſie, it appeareth, that, for all cauſes not excepted, is prohibited by the Act) Then the words of the Proviſo go further, If the Biſhop or other Ordinary immediatly hereunto conſent, or if the ſame Biſhop or other immediate Ordinary or Judge do not his duty in puniſhment of the ſame; which words immediatly and immediate expound the intent of the makers of the Act.

2. There is a ſaving for the Archbiſhop the calling any perſon out of the Dioces where he ſhall be dwelling to the probate of any Teſtaments; which Proviſo ſhould be alſo in vain, if the Archbiſhop notwithſtanding that Act ſhould have concurrent Authority with every Ordinary through his whole Province: Wherefore it was concluded that the Archbiſhop out of his Dioces, unleſſe in the Caſes excepted, is prohibited by the Act of 23 H. 8. to cite any man out of any other Dioces. And in truth the Act of 23. of Henry the eighth, is but a Law declaratory of the ancient Canons, and of the true expoſition of them: And that appeareth by the Canon: Cap. Romana in ſexto de Appellationibus, and Cap. de Competenti in ſexto. And the ſaid Act is ſo expounded by all the Clergy of England, at a Convocation in London, An. 1 Jac. Regis 1603. Canon 94. Where it is decreed, ordained, and declared, That none ſhould be cited to the Arches, or Audience, but the Inhabitants within the Archbiſhops Dioces, or Peculiar, other then in ſuch particular Caſes only as are expreſſly excepted and reſerved in and by a Statute, Anno 23 H. 8. cap. 9. And the King by Letters Patents under the great Seal hath given his royall Aſſent to this amongſt others from time to time to be obſerved, fulfilled, and kept, as well by the Archbiſhop of Canterbury, the Biſhops and their Succeſſors, and the reſt of the whole Clergy of the Province of Canterbury, in their ſeverall Callings, Offices, Functions, Miniſteries, Degrees, and Adminiſtrations; as alſo by all and every Dean of the Arches, and other Judge of the ſaid Archbiſhops Courts, Guardians of Spiritualties, Chancellors, &c. So the ſame is alſo expreſſly confirmed under the great Seal. And although the Archbiſhoprick of Canterbury was then void, yet the Guardian of the Spiritualties was there, and the Archbiſhop of Canterbury that now is, and then Biſhop of London, was by Letters Patents, Preſident of the ſaid Councell in the place of the Archbiſhop then deceaſed: And the King gave his royall Aſſent to the ſame, and the ſaid Canon is of as full force as if the ſaid late Archbiſhop of Canterbury had been then alive. And whereas it is ſaid in the Preamble of the Act, In the Arches, Audience, and other high Courts of the Archbiſhop of this Realm; It is to be known, That the Archbiſhops of this Realm before that Act had power Legatine from the Pope, by which they pretended to have not only ſupereminent Authority over all, but concurrent Authority with every Ordinary in his Dioces, not as Archbiſhop of Canterbury, &c. but by his power and authority

The Act of 23 H. 8. is a Declaration of the old Canon Law.

Canon 1. Jac. at the Synod at London, Vi. Linwood de excuſationibus 100. Lit. m. 5. & pag. 2. L. 2. A° Dñi 1603.

Archbiſhops were Legati nati, and had Legatine power which is now abolished, vi. *Linwood.*

authority Legatine: For Sunt tria genera Legatorum 1. quidam de latere Dom. Papæ mittuntur, ut Cardinales quos appellant fratres. 2. Alii ſunt Dativi, & non de latere, qui ſimpliciter in Legatione mittantur, &c. 3. Sunt Nati, ſive Nativi, qui ſuarum Eccleſiarum prætextu legatione fingantur, & Tales ſunt quatuor. ſcil. Archepiſcopus Cant. Eboracenſis, Remanenſis, & Piſanis. So as before that Act, the Archbiſhop of Canterbury, was Legatus Natus, and by force of his authority Legatine uſurped againſt the Canons upon all the Ordinaries in his Precinct, and by colour thereof claimed currant authority with them, which although they held in the Courts of the Archbiſhop, the ſame was remedied by the Act of 23 H. 8. cap. 9. and all that which he uſurped before, was not as he was Archbiſhop, for as to that he was reſtrained by the Canons, but as he was Legatus Natus, which authority is now taken away and abolished utterly.

Vi. lib. Arch. Cant. p. 39. that the Arch-Biſhop of Cant. hath a Peculiar in many Dioces.

Laſtly, If the ſaid Act of 23 H. 8. cap. 9. ſhould not be ſo expounded, Then the Act which is principally made (as it appeareth by the Preamble againſt the Courts of the Archbiſhopricks ſhould be as to them illuſory, For if the Biſhop of Canterbury in reſpect of his exempt Peculiar in London may draw to him all the Dioces in London. So might he at Newington which is a Peculiar in Wincheſter Dioces, draw to him the whole Dioces of Wincheſter: And at Totteredge neer Bornet, the whole Dioces of Lincoln, and ſo of the like.

3. It was reſolved, That when any Judges are prohibited by any Act of Parliament, that if they do proceed againſt the Act, there a Prohibition lieth. As againſt the Steward and Marſhall of the Houſhold. Quod ſeneſchallus & Mariſcallus non teneant Placit. de libero tenem. de Debito, de Conventione, &c. So the Statute of Articuli ſuper chartas cap. 3. Regiſter fol. 185. inter Brevia ſuper ſtatuta. So againſt the Conſtable of the Caſtle of Dover: Quod non tangit Cuſtodiam Caſtri. So to Juſtices of Aſſiſe upon the ſtatute Quod Inquiſitiones quæ ſunt magni exactionis non Capiantur in Patria. 142

Vi. Paſc. 42 Eliz. Rot. 139. Rudds caſe, a Prohibition for citing out of the Dioces, Tr. 44 Eliz. Rot. 1073. the like, in an information upon the Statute againſt Zachary Babington.

Alſo to the Treaſurer and Barons of the Exchequer, upon the ſtatute De Articul. ſuper Cartas Cap. 4. The ſtatute of Rutland, Cap. ultimo. Quod communia Placit. non teneantur in Scaccario. All which, and many more, you may ſee in the Regiſter inter Brevia ſuper Statuta. See F.N.B. 45, & 46. &c. 17 H. 6. 54. vi. 13 E. 3. to Prohibition: A Prohibition to the Chancellor, and diverſity of Courts in the Title of Chancery. So againſt all Eccleſiaſticall Judges upon the ſtatute of 2 H. 5. cap. 3. If the Judges there will not give or deliver to the party a Copy of the Libell, although that the matter be meer Eccleſiaſticall: and therewith agreeth 4 E. 4. 37. and F. N. B. 43. c. So the Caſe upon the Statute of 2 H. 5. cap. 15. If the Eccleſiaſticall Judges in caſe of Hereſie, and other matters of meer Spiritualty do not proceed according to the intention of the ſame ſtatute; as it appeareth by the Preſident in 5 E. 4. Keyſons Caſe, 10 H. 7. 17. See the opinion of Paſton, 9 H. 6. 3. A man excommunicated by the Biſhop of London for a Crime done in another Dioces, ſhall not be grieved thereby, ſo as the Common Law takes notice of the Canons, in ſuch caſe, as Coram non Judice. And although the ſtatute of 23 H. 8. inflicts a penalty, yet a Prohibition lyeth, for the inflicting of the penalty doth not take away the Prohibition of the Law: and therefore, Cap. which inflicts puniſhment if the Sheriff doth not put his Name unto the Return; yet the ſame is Error if he doth not put to his Name: ſee 35 H. 6. 6. when any thing is prohibited by a Statute if the party be convicted he ſhall be fined for the

Vi. If any one in the Spirituall Court appeals contrary to the Statute of 24 H. 8. cap. 12. akhough the matter be meer Spiritual a Prohibition lyeth. So upon the Statute of 2 H 5. cap. 3.

the contempt to the Law: and 19 H.6.4. agrees in Maintenance: And if every perſon ſhould be put to his Action upon the Statute, the ſame ſhould be cauſe of Suits and veration, and the ſhorteſt and more eaſy is to have a Prohibition: See the Statute of 21 H.8. cap. 6. of Mortuaries, by which it is enacted, That no Parſon, Vicar, Curat, &c. demand any Mortuary but in ſuch manner as is mentioned in the Act, upon pain of forfeiture of ſo much in value as they take, more then is limited by the Act, and forty ſhillings over to the party grieved. Yet it appeareth by Doctor and Student lib.2. cap. 55. fol. 105. That if the Parſon, &c. ſueth for Mortuaries otherwiſe then the Act appointeth, that a Prohibition lyeth; yet there is a Penalty added, which is an authority expreſſly in the Point: And the Caſe at Bar is a more ſtrong Caſe, and that for three reaſons.

See 2 H.4. 10 by Haukford, and ſo affirmed by the Court, when one who hath not authority, holdeth plea in ſpirituall things, whereof the Juriſdiction doth not belong to him, yet no conſultation ſhall be grãted, becauſe a conſultation ſhall not be granted to one that hath not power. &c.

1. It was made in affirmance of the Canon Law.

2. It was made for the eaſe of the People and Subjects, and for the maintenance of the Juriſdiction of the Ordinary, ſo as the Subjects have benefit by the Act; and therefore although that the King may diſpenſe with the penalty, yet the Subject greived ſhall have a Prohibition. And the Rule of the Court was, Fiat Prohibitio Curiæ Cantuar. de Arcub. Inter partes prædict. per Curiam. And Sherly, and Harris Junior, Serjeants at Law, were of Councell in the Caſe.

III. Mich. 6 Jacobi Regis. Edwards Caſe.

The high Commiſſioners in Cauſes Eccleſiaſticall objected divers Articles in Engliſh, againſt Thomas Edwards dwelling in the City of Executer. High Commiſſion.

1. That Mr. John Walton hath been many yeares trained up in Learning in the Univerſity of Oxford, and there worthily admitted to ſeverall degrees of Schools, and deſervedly took upon him the degree of Doctor of Phyſick.

2. That he was a Reverend, and well practiſed man in the Art of Phyſick.

3. That you the ſaid Thomas Edwards are no Graduate.

4. That you knowing the Premiſſes, notwithſtanding you the ſaid Edwards, &c. of purpoſe to diſgrace the ſaid Dr. Walton, and to blemiſh his Reputation, Learning, and Skill with infamy and reproach, did againſt the Rules of Charity write and ſend to the ſaid Mr. Doctor Walton, a lewd and ungoodly, and uncharitable Letter, and therein taxed him of want of Civility and Honeſty, and want of Skill and Judgment in his Art and Profeſſion, &c. And your ſo far exceeded in your immoderate and uncivill Letter, that you told him therein in plaine termes, He may be crowned for an Aſſe, as if he had no manner of skil in his Profeſſion, and were altogether unworthily admitted to the ſaid Degrees, and therein you purpoſely and adviſedly taxed the whole Univerſity of raſhneſſe and indiſcretion for admitting him to that Degree without ſufficiency and deſert.

5. And further to diſgrace the ſaid Mr. Doctor Walton, in the ſaid Univerſity, did publiſh a Copy of the ſaid Letter to Sir William Courtney and others, and in your Letter was contained, Sipſilam lichenen mentegram, Take that for your Inheritance, and thank God you had a good Father: And did not you thereby co-

vertly mean, and imply, That the Father of the ſaid Mr. Walton (being late Biſhop of Exeter, and a Reverend Prelate of this Land) was ſubject to the Diſeaſes of the French Pox and Leproſie, to the diſlike of the Dignity and Calling of Biſhops.

6. That in another Letter you ſent to Mr. Doctor Maders Doctor of Phyſick, you named Mr. Doctor Walton, and made a Horn in your Letter: And we require you upon your Oath to ſet down, whether you meant not that they were both Cuckoulds, and what other meaning you had.

7. You knowing that Mr. Walton was one of the high Commiſſion in the Dioces of Exeter, and having obtained a Sentence againſt him in the Star-Chamber, for contriving and publiſhing of a Libell, did triumphingly ſay, That you had gotten on the hipp a Commiſſioner for Cauſes Eccleſiaſticall in the Dioces of Exeter, which you did to vilifie and diſgrace him, and in him the whole Commiſſion Eccleſiaſticall in thoſe parts.

Laſtly, That after the Letter miſſive ſent unto you, you ſaid arrogantly, That you cared not for any thing that this Court can do unto you, nor for their cenſure, for that you can remove this matter at your pleaſure.

And this Term it was moved to have a Prohibition in this Caſe. And the matter was well argued; And at laſt it was reſolved by Coke chief Juſtice, Warberton, Daniel, and Foſter Juſtices, That the firſt ſix Articles were meer Temporall concerning Doctor Walton in his Profeſſion of Phyſick. and ſo touched the Temporall perſon, and a temporall matter, and in truth, It is in the nature of an Action upon the Caſe for Scandall in his Profeſſion of Phyſick: And yet the Commiſſioners themſelves do proceed in the ſame Ex Officio. And it was reſolved, that as for them, a Prohibition doth lye for divers cauſes.

See Book of Entries 444. & 447. Non eſt Juri conſentanium quod quis ſuper iis quorum cognitio ad nos pertinet in Curia Chriſtianitatis trahatur in placita vi. Stat. Circumſpecte agatis, An. 13. E. 1. Epiſcopus teneat. plicita in Curia Chriſtianitatis de his quæ ſunt mere Spiritualia. Et vi. Linwood f. 70. Lit. m. dicuntur mere Spiritualia quia non habent mixturam Temporalem. vi. 22 E. 4. 1. Conſulrat. vi. 22 E. 4 the Abbot of Sion. caſe.

1. Becauſe that the matter and perſons are Temporall.

2. Secondly, Becauſe it is for Defamation, which if any ſuch ſhall be for the ſame, it ought to begin before the Ordinary, becauſe it is not ſuch an Enormous Offence, which is to be determined by the high Commiſſioners: And for the ſame reaſon Suit doth not lye before them, for calling the Doctor Cuckould, as it was objected in the ſeventh Article: And it was ſaid, that the high Commiſſioners ought to incur the danger of Premunire.

1. Co. 26. 47.

2. It was reſolved, That the Eccleſiaſticall Judge cannot examine any man upon his Oath, upon the intention and thought of his Heart, for Cogitationis penam nemo emoret. And in caſes where a man is to be examined upon his Oath, he ought to be examined upon Acts or words, and not of the intention and thought of his heart; and if every man ſhould be examined upon his Oath, what opinion he holdeth concerning any point of Religion, he is not bound to anſwer the ſame, for in time of danger, Quis modo tutus erit, if every one ſhould be examined of his thoughts. And ſo long as a man doth not offend neither in act nor in word any Law eſtabliſhed, there is no reaſon that he ſhould be examined upon his thought or Cogitation: For as it hath been ſaid in the Proverb, Thought is free; And therefore for the firth and ſeventh Articles, they were reſolved as well for the matter as for the form in offering to examine the Defendant upon his Oath, of his intention and meaning, were ſuch, to which the Defendant was not to be compelled to anſwer: Ergo, It was reſolved, that as to the Article, he might juſtifie the ſame, becauſe as it appeareth upon his own ſhewing, that

the

the Doctor was ſentenced in the Star-Chamber: Alſo the Libell is matter meer Temporall, and if it were meer Spirituall ſuch a Defamation is not examinable before the high Commiſſioners.

As to the laſt Article, It appeareth now by the Judgment of this Court, that he might well juſtifie the ſaid words: Alſo the high Commiſſioners ſhall not have Conuſance of any Scandall to themſelves for that they are parties; and ſuch Scandall is punishable by the Common Law, as it was reſolved in Hales Caſe, which ſee in the Book of the Lord Dyers Reports, and ſee in my Book of Preſidents, the Copy of the Indictment of Hales, for ſcandaling of the Eccleſiaſticall Commiſſioners. Judex non poteſt injuriam ſibi datam punire. Vi. the Stat. of 23 H. 8. c. 9.

Note, the Biſhop of Wincheſter being Viſiter of the School of Wincheſter of the Foundation of Wickam Biſhop of Wincheſter, and the Biſhop and Cant. and other his Colleagues, An. 5 Car. cited the Maſter of the ſaid School, by force of the ſaid Commiſſion to appear before them, and proceed there againſt him, for which they incurred the danger of a Præmunire. And ſo did the Biſhop of Canterbury and his Colleagues, by force of a high Commiſſion to them directed, cite one Humphrey Frank Maſter of Arts and Schoolmaſter of the School of Sevenock of the Foundation of Sir William Sevenock, in the time of King Henry the firth) to appear before the high Commiſſioners at Lambeth the ſixth day of December laſt paſt, which citation was ſubſcribed by Sir John Bennet Doctor of Law, Doctor James, and Doctor Hickman, three of the high Commiſſioners: and Sir Chriſtopher Perkins procured the ſaid Citation to be made, and when the ſaid Frank appeared, the Archbiſhop being aſſociated with Sir Chriſtopher Perkins, and Doctor Abbot Dean of Wincheſter, made an Order concerning the ſaid School (ſcil.) That the ſaid Frank ſhall continue in the ſaid School untill the Annunciation, and that he ſhould have twenty pounds paid to him by Sir Ralph Boſoile Knight. 12 Co 39.

IV. Mich. 6 Jacobi Regis.

Taylor and Shoiles Caſe. 3. 178.

TAylor informed upon the Statute of 5 Eliz. cap. 4. Tam pro Domino Reg. quam pro ſeipſo in the Exchequer, That the Defendant had exerciſed the Art and Myſtery of a Brewer, &c. and averred that Shoile the Defendant did not uſe or exerciſe the Art or Myſtery of a Brewer, at the time of the making of the Act, nor had been Apprentice by ſeven years at leaſt, according to the ſaid Act, &c. The Defendant did demur in Law upon the Information, and Judgment was given againſt him by the Barons of the Exchequer. And now in this Terme upon a Writ of Error, the matter was argued at Serjeants-Inne, before the two chief Juſtices, and two matters were moved; The One, That a Brewer is not within the ſaid Branch of the ſaid Act: For the words are, That it ſhall not be lawfull to any perſon or perſons, other then ſuch as now lawfully uſe or exerciſe any Art, Myſtery, or manuall Occupation, to ſet up, uſe, or exerciſe any Art, Myſtery, or manuall Occupation, except he ſhall have been brought up therein ſeven years at the leaſt, as an Apprentice. And it was ſaid, That the Trade of a Brewer is not any Art, Myſtery, or manuall Occupation within the ſaid Branch, becauſe the ſame is eaſily and preſently learned, and he needs

needs not to have seven years Apprentiship to be instructed in the same, for every Huswife in the Country can do the same: and the Act of Henry the eighth is, That a Brewer is not a Handycraft Artificer.

2. It was moved, That the said Averment was not sufficient, for the Averment ought to be as generall as the exception in the Statute is (scil.) That the Defendant did not use any Art, Mystery, or Occupation at the time of the making of the same Act, for by this pretence if any Art, &c. then as a Taylor, Carpenter, &c. he may now exercise any other Art whatsoever.

As unto the first, It was resolved, That the Trade of a Brewer (scil.) to hold a common Brewhouse, to sell Beer or Ale to another, is an Art and Mystery within the said Act,; for in the beginning of the Act, It is enacted, That no person shall be retained for lesse time then a whole year in any of the Services, Crafts, Mysteries, or Arts of Cloathing, &c. Bakers, Brewers, &c. Cooks, &c. So as by the judgment of the same Parliament, The Trade of a Brewer is an Art and Mystery; which words are in the said Branch upon which the said Information is grounded. Also because that every Huswife brews for her private use; so also she bakes, and dresseth Meat: And yet none can hold a common Bakehouse, or a Cooks Shop to sell to others, unlesse that he hath been an Apprentice, &c. for they are expresly named also in the Act as Arts and Mysteries: And the Act of 22 H. 8. cap. 13. is explained, That a Brewer, Baker, Surgeon, and Scrivener Alien, are not handycrafts mentioned within certain penall Lawes: But the same doth not prove, but that they are Arts or Mysterys, for Art or Mystery is more generall then Handycrafts, for the same is restrained to Manufactures.

As to the second Point, It was resolved, That the intention of the Act was, That none should take upon him any Art, but he who hath skill or knowledge in the same: And therefore the Statute intendeth, That he who useth any Art or Mystery at the time of the Act, might use the same Art or Mystery; for Quod quisque norit in hoc se exerceat: And the words of the Act are, As now do lawfully use, &c. And it was said, That it was very necessary, that Brewers should have knowledge and skill in brewing good and wholsome Beer and Ale, for that the same doth greatly conduce to mens healths: And so the first Judgment was affirmed.

V. Mich. 6 Jacobi, In the Common Pleas.

The Case of Modus Decimandi.

Tithes.

SHerley Serjeant moved to have a Prohibition, because that a person sued to have Tithes of Silva Cedua under twenty years growth in the Weild of Kent; where, by the Custome of it which is a great part of the County, Tithes of any Wood was never paid. And if such a Custome in non Decimando for all Lay-people within the said Weild, were lawfull or not was the question; And to have a Prohibition it was said, That although one particular man shall not prescribe in non decimando, yet such a generall Custome within a great Country might well be, as in 43 E. 3. 32. and 45 E. 3. Custome 15. It was presented in the Kings Bench, That an Abbot had purchased Tenements after the Statute, &c. And the Abbot came and said, That he was Lord of the Town

Town,&c. And the cuſtome of the Town was, That when the Tenant ceaſeth for two years, that the Lord might enter untill agreement be made for the Arrerages; And that he who held theſe Tenements was his Tenant, and ceaſed for two years, and he entred: and the Rule of the Court is, Becauſe it was an uſage only in that Town, and not in the Towns, that is, in the Country adjoyning; he was put to anſwer: So as by the ſame it appeareth, that a Cuſtome was not good in a particular Town, which perhaps might be good and of force in a Country,&c. See 40 Aſſ. 21. and 27, 39 E. 3. 2. A Cuſtome within a Town, that an Infant,&c. might alien, is not good; But yet ſuch a Cuſtome within Kent hath often times been adjudged to be good. See 7 H.6.26.b. 16 E.2. Preſcription 53.Dyer 363. 22 H. 6. 14. 21 E. 4. 15. and 45 Aſſ. 8. See Doctor and Student lib. 2. cap. 55. A particular Country may preſcribe to pay no Tithes for Corn, Hay, and other things, but that is with this caution, ſo as the Miniſter hath ſufficient portion beſides to maintain him, to celebrate the Divine Service: And fol.172. It is holden, That where Tithes have not been paid of under-woods under twenty years growth, that no Tithes ſhall be paid for the ſame, becauſe that they do not renew nor increaſe from yeare to year, ſo as they are not due to the Parſon but by Cuſtome. And he ſaith fol.174. That ſuch a Cuſtome of a whole Country, that no Tithes of a Lordſhip ſhall be paid, is good; and it is to be obſerved, that in all Libells for Tithes of Woods, they alledge a preſcription to have Tithes of them: But the Court would adviſe, whether ſuch a Cuſtome for a Town or a Country ſhould be good; But in ancient times, The Pariſhioners have given or procured to the Parſon a Wood or other Lands,&c. to have and to hold to him and his Succeſſors in ſatisfaction of all Tithes of Wood in the ſame Pariſh, and the Parſon is now ſeiſed of the ſame Wood, and that without queſtion is a good diſcharge of his Tithes; and that in ſuch caſe, if he ſueth for Tithes of Wood a Prohibition lieth: And therefore it hath been ſaid now of late, That ſuch opinions were new and without any antiquity, unto the great prejudice of the Church: I will cite you an ancient Judgment many years paſt, Mich. 25 H.3. Wilts. Rot. 5. before the King at Weſtminſter, Samſon Foliet brought an Attaint upon a Prohibition, againſt Thomas Parſon of Swynden, becauſe he ſued him in the Spirituall Court for a Lay Fee of the ſaid Samſon, in Draycot, contrary to the Kings Prohibition,&c. The Defendant pleaded, Quod Coram Judicibus Delegatis petiit de eodem Decimas ſœni de quodam prato ipſius Samſonis in Walcot unde eſt in poſſeſſione per ſententiam Judicum ſuorum & fuit antequam Prohibitio Dom. Regis ad eum pervenerit, & quod Pratum prædict. eſt in Walcot unde ipſe eſt Perſona, & non in Draycot: To which the ſaid Samſon replyed and ſaid, Quod Anteceſſores ſui antiquitus dederunt Duas acras prati Eccleſiæ de Draycot pro decimis ſœni quam prædict. Thomas modo petit in eodem prato, quas quidem duas acras prati eadem Eccleſia adhuc habet, & ſemper hucuſque habuit, unde videtur ei quod illud quod prædict. Thomas ultra petit, eſt de laico feodo ſuo, & dicit quod pratum illud in quo idem Thomas petit Decimas eſt in Draycot ſicut Breve dicit, & non in Walcot, & de hoc ponit ſe ſuper Patriam: And the Jury found, Quod prædict. Thomas Perſona de Swyndon ſecutus fuit placita in Curia Chriſtianitatis de Laico feodo prædict. Samſonis contra Prohibitionem Dom. Regis, petendo ab ipſo Decimas ſœni de quodam prato ipſius Samſonis in Draycot unde Anteceſſores ſui antiquitus dederunt Eccleſiæ de Draycot duas acras prati pro Decima

Pſon & Country.

25 H.3. Holiat & Tho Parſon de Swynden.

fæni quam prædict. Thomas modo petit,& quas eadem Eccleſia adhuc habet & ſemper hucuſque habuit,&c. Et quod Pratum prædict. in quo idem Thomas petiit Decimas eſt in Draycot,& non in Walcot,&c. Ideo Conſideratum eſt quod prædict. Thomas ſit inde in miſericord. & reddat prædi. Samſoni 20. Marcas quas verſus eum pro Damnis, &c. Which ancient Judgment I have recited at large, becauſe that the ſame agrees with the Rule and reaſon of the Law continued untill this day: For Judgments or Preſidents in the time of Ed. 2. E. 1. H. 3. John R. 1. and more ancient are not Authorities or Preſidents to be now followed, unleſſe that they concur and agree with the Law, and common experience and practice at this day; for many Acts of Parliaments (and ſome of them not extant) have changed the ancient Laws in divers Caſes: and Deſuetudo hath antiquated and time and Cuſtome hath taken away divers others; So as the Rule is good, Quod Judiciis poſterioribus fides eſt adhibenda; Et a Communi obſervantia non eſt recedendum. There are two points adjudged by the ſaid Record.

1. That ſatisfaction may be given in diſcharge of payment of Tithes; And if the Succeſſor of the Parſon enjoyeth the thing given in ſatisfaction of the Tithes, and ſueth for Tithes in kind, he ſhall have a Prohibition, becauſe that he chargeth his Lay Fee with Tithes, which is diſcharged of them. By which it appeareth that Tithes cannot be diſcharged, and altogether taken away and extinct: And herewith agreeth the Regiſter which is the moſt ancient Book of the Law, fol. 38. Rex, &c. tali Judici, &c. ſaltem. Monſtravit nobis A. tenens quandam partem Manerii de D. quod licet E. nuper Dominus Manerii prædict. per quoddam ſcriptum Indentat. dediſſet & conceſſiſſet F. nuper Perſonæ Eccleſiæ de D. quatuor acras terræ cum pertin. in eodem Manerio Habend. & tenend. eidem F. & ſucceſſoribus ſuis Perſonæ Eccleſiæ prædict. in perpetuum. Et eidem F. per prædictum ſcriptum de aſſenſu & voluntate Epiſcopi Lincoln. Diocefani loci prædict. & J. tunc Patroni Eccleſiæ prædict. conceſſit pro ſe & ſucceſſoribus ſuis quod idem E. hæredes & aſſignati ſui eſſent quieti de Decimis vitulorum, &c. in Manerio prædict. pro prædict. quatuor acris ſibi datis, &c. Et tamen nunc Perſona Eccleſiæ prædict. tenens prædict. quatuor acras terræ prædict. prædict. A. aſſignato prædict. E. ſuper decimam hujuſmodi vitulorum, &c. in eodem Manerio, ſibi præſentand. trahit in placitum coram,&c. in Curia Chriſtianitatis,&c. Et quia diſcuſſio hujuſmodi Donationis de laico feodo in regno noſtro in Curia noſtra, & non alibi tractari & fieri debet, vobis prohibemus, Quod placitum aliquod laicum feodum in Regno noſtro non teneatis in Curia Chriſtianitatis, nec quicquam in hac parte quod in enervationem dicti ſcripti aut Donationis, & conceſſionis prædict. quæ in Curia noſtra & non alibi tractari ſicut prædict. eſt cedere poterit attententis, ſive attentim faciatis quoviſmodo; By which alſo it appeareth, That Tithes may be diſcharged, and that the matter of diſcharge ought to be determined by the Common Law, and not in the Spirituall Court: And it is to be obſerved, That in the ſaid Judgment, nor in the Regiſter any averment is taken of the value of the thing given in ſatisfaction of the Tithes. Alſo by the Act of Circumſpecte agatis made, 13 E. 1. It is ſaid, S. Rector petat verſus parochianos oblationes, & decimas debitas, ſeu conſuetas,&c. which proves that there are Tithes due in kind, and other Tithes due by Cuſtome, as a Modus Decimandi,&c. And yet it is reſolved in 19 E. 3. Juriſdiction 28. That the Ordinance of Circumſpecte agatis is not a Statute; and that the Prelates made the ſame, and yet then, the Prelates acknowledged,

That

That there were Tithes due by Custome, which is a Modus Decimandi, By which it appeareth also, That Tithes by Custome may be altered into another thing: So where a man grants a parcel of his Manno⁹ to a Parson in Fee to be quit of Tithes and makes an Indenture, and the Parson with the assent of the Ordinary (without the Patron) grants to him that he shall be quit of Tithes of his Manno⁹ for that parcell of Land: Afterwards if he o⁹ his Assignee be sued in the Spirituall Court for Tithes of his Manno⁹, he o⁹ his Assignee shall have a Prohibition upon that Deed. And if that Deed was made before time of memory, and he hath so continued to be quit of Tithes, he shall have a Prohibition upon that Deed, if he be sued for the Tithes of that Manno⁹ o⁹ of any parcell of the same upon that matter shewed: See 8 E. 4. 14. F.N.B. 41. g. vi. 3. E. 3. 17. 16 E. 3. t. Annuity 24. 40 E. 3. 3. b. and F.N.B. 152. And therefore if the Lord of a Manno⁹ hath alwaies holden his Manno⁹ discharged of tithes, and the Parson had before time of memory, o⁹ in ancient times divers Lands in the same Parish of the Gift of the Lord, of which the Parson is seised at this day in Fee, in respect of which, the Parson no⁹ any of his Predecessors ever had received any tithes of the said Manno⁹: If the Parson now sueth for tithes of the Manno⁹, the Owner of the Manno⁹ may shew that speciall matter, and that the Parson and his Successors time out of mind have holden those Lands, &c. of the Gift of one who was Lord of the said Manno⁹, in full satisfaction of the tithes of the said Manno⁹; And the proof, that the Lord of the Manno⁹ gave the Lands, that tithes should never be paid, at this day is good evidence to prove the surmise of the Prohibition. And so of the like: and 19 E. 3. t. Jurisdiction 28. it is adjudged, That Title of Prescription, shall be determined in the Kings Court: And therefore a Modus Decimandi which accrueth by Custome and Prescription in the Kings Court. And it appeareth by the Statute of 6 H. 4. cap. 6. That the Pope by his Bulls discharged divers from payment of tithes, against which the Act of Parliament was made; and by the Statute of 31 H. 8. cap. 13. That the Possessions of Religious persons given to the King, were discharged of payment of tithes in certain Cases: and by the Statute of 32 H. 8. cap. 7. it is provided, That all and singular persons shall divide, set out, yeild, and pay all and singular tithes and Offerings aforesaid, according to the lawfull customes and usages of the Parishes and places where such tithes o⁹ Duties shall come, o⁹ immediatly arise o⁹ be due: Provided allwaies, and be it enacted, That no person o⁹ persons shall be sued o⁹ otherwise compelled to pay any manner of tithes, for any Manno⁹s, Lands, Tenements, o⁹ Hereditaments, which by the Laws o⁹ Statutes of this Realm are discharged, o⁹ not chargable with the payment of any such tithes: And the Statute of 2 E. 6. cap. 13. Enacts, That every of the Kings Subjects shall from henceforth justifie, and truly without fraud o⁹ guile, divide, set out, &c. all manner of their predial tithes in their proper kind as they will rise and happen, in such manner and form as hath been of right yeilded and paid, within forty years next before the making of this Act, o⁹ of Right o⁹ Custome ought to be paid. So as it appeareth by this, that tithe is due of Right, and by Custom: And also in the same Act there is a Proviso in these words; Provided allwaies and be it enacted, That no person shall be sued, o⁹ otherwise compelled to yeild, give, o⁹ pay any manner of tithes for any Manno⁹s, Lands, Tenements, o⁹ Hereditaments, which by the Laws and Statutes of this Realm, o⁹ by any Privilege o⁹ Prescription, are not chargable

chargable with the payment of any ſuch tithes, or that he diſcharged by any compoſition reall: ſo as it appeareth by that Act, that one may be diſcharged from the payment of tithes five manner of waies.

1. By the Law of the Realm, that is, the Common Law; As Tithes ſhall not be paid of Coals, Quarries, Brick, Tiles, &c. F. N. B 53. and Regiſter 54 Nor of the after Paſture of a Meadow, &c. nor of Rakings, nor of Wood to make Pales, or Bounds, or Hedges, &c.

2. By the Statutes of the Realm: As by the Statute of 31 H. 8. cap. 13. the Statute of 45 E. 3. &c.

3. By Priviledge, as thoſe of S. Johns of Jeruſalem in England; The Ciſtertians, Temptors, &c. as it appeareth by 10 H. 7. 277. Dyer.

4. By Preſcription, As by Modus Decimandi, or an annuall Recompence in ſatisfaction of them, as appeareth before by the Authorities aforeſaid.

5. By reall Compoſition, as appeareth by the ſaid Writ cited out of the Regiſter: And ſo you have one or two examples (for many others which may be added) of theſe five manners of diſcharges of Tithes. And by them all it appeareth, That a man may be diſcharged of the payment of Tithes, as before is ſaid: So as now it apparently appeareth by the Laws of England, both Ancient and Modern, That a Lay-man ought preſcribe in modo Decimandi, but not in non Decimando: and that in effect agrees with the Opinion of Thomas Aquinas in his Secunda ſecundæ, Quæſt. 86. ar. ultimo. For there he ſaith, Quod in veteri lege præceptum de ſolutione Decimarum, partim erat morali inditum ratione naturali quæ dictat Quod iis Qui Divino Cultui miniſtrant ad ſalutem totius populi neceſſaria victui debent miniſtr. Juxta illud, 1 Cor. 9. Quis militat, &c. Who goeth to War at his own charges, &c. Partim autem erat judiciale ex Divina inſtitutione robur habens, (ſcil.) Quantum ad determinationem certæ partis: And all that agrees with our Law; And he goeth further, In tempore vero Novæ Legis etiam eſt determinatio partis ſolvendæ authoritate Eccleſiæ (That is by their Canons) Inſtituta ſecundum quandam humanitatem, ut ſcilicet non minus populus Novæ Legis Miniſtros novi Teſtamenti exuberat, quam populus veteris Legis miniſtris veteris Teſtamenti exhibebat, præſertim cum Miniſtri Novæ Legis ſunt Majores Dignitate, ut probat Apoſtolus 2 Cor. 3. Sic ergo patet Quod ad ſolutionem Decimarum tenentur homines partim quidem ex jure naturali, quantum ad hoc quod aliqua portio data eſt miniſtris Eccleſiæ, partim vero ex inſtitutione Eccleſiæ quantum ad determinationem Decimæ Partis. See Doctor and Student Lib. 2. cap. 55. fol. 164. That the tenth part is not due by the Law of God, nor by the Law of Nature, which he calleth the Law of Reaſon: And he citeth John Gerſon who was a Doctor of Divinity, in a Treatiſe which he calleth Regulæ morales (ſcil.) Solutio Decimaram ſacerdotibus eſt de jure Divino, quatenus inde ſuſtententur, ſed quo ad tam hanc vel illam aſſignare aut in alios redditus Commutare poſitivi juris eſt. And afterwards, Non vocatur Portio Curatis debita propterea Decimæ, eo quod eſt Decima pars, imo eſt interdum viceſima, aut triceſima. And he holdeth, That a Portion is due by the Law of Nature, which is the Law of God, but it appertaineth to the Law of Man to aſſign, Hanc vel illam portionem, as neceſſity requireth for their Suſtenance. And further he ſaith, That Tithes may be exchanged into Lands, Annuity, or Rent, which ſhall be ſufficient for the Miniſter, &c. And there he ſaith, That in Italy, and in other the Eaſt Countries, they pay no Tithes, but a certain Portion according to the Cuſtome, &c. And all this is true, if not,

not, that Tithes be diſcharged or changed by one of the ſaid five waies: And foraſmuch as it appeareth by themſelves, that the part or value was part of the Judiciall Law, certainly the ſame doth not bind any Chriſtian Common-wealth, but that the ſame may be altered by reaſon of time, place, or other conſideration, as it appeareth in all puniſhments inflicted by the Judiciall Law, they do not bind none, for Felony is now puniſhed by death, &c. which was not ſo by the Judiciall Law, &c. Alſo foraſmuch as now it is confeſſed, that the tenth part is now due, Ex inſtitutione Eccleſiæ, that is to ſay, By their Canons, and it appeareth by the Statute of 25 H. 8. cap. 19. That all Canons, &c. made againſt the Prerogative of the King in his Laws, Statutes, or Cuſtomes of the Realm are void; and that was but a Declaratory Law; For no Statute or Cuſtome of the Realm can be taken away or abrogated by any Canon, &c. made out or within the Realm, but only by Act of Parliament: and that well appeareth by 10 H. 7. f. 17. c. 18. That there is a Canon or Conſtitution, That no Prieſt ought to be impleaded at the Common Law. And there Brian ſaith, That a grave Doctor of the Law once ſaid unto him, That Prieſts and Clarks might be ſued at the Common Law well enough; For he ſaid, that Rex eſt perſona mixta, and is Perſona unita cum Sacerdotibus Statutis Eccleſiæ. In which caſe the King might maintain his Juriſdiction by preſcription; By which it appeareth that preſcription doth prevail againſt expreſſe Canons or Conſtitutions and is not taken away by them, which proves that the Statute of 25 H. 8. was but a Declaration of the ancient Law before: And there is an expreſſe Prohibition in *Numb.* 18. Nihil aliud poſſedebunt, Decimarum oblatione contenti quas in uſus eorum & neceſſaria ſeparavi: Which was not part of the Morall Law, or Law of Nature, but part of the Judiciall: And therefore men of the holy Church at this day do poſſeſſe Houſes, Lands, and Tenements, and not Tithes only. The ſecond point which agrees with the Law at this day, which was adjudged in the ſaid Record of 25 H. 3. is, That the limits and bounds of Towns and Pariſhes ſhall be tried by the Common Law, and not in the Spirituall Court: and in this the Law hath great reaſon, for thereupon depends the Title of Inheritance of the Lay Fee, whereof the Tithes were demanded for Fines, and Recoveries are the common aſſurances of Lay Inheritances: and if the Spirituall Court ſhould try the bounds of Towns, if they determine that my Land lyeth in another Town then is contained in my Fine, Recovery, or other aſſurance, I ſhall be in danger to loſe my Inheritance, and therewith agreeth 39 E. 3. 29. 5 H. 5. 10. 32 E. 4. t. Conſultation, 3 E. 4. 12. 19 H. 6. 20. 50 E. 3. 20. & many other Preſidents untill this day. And note, there is a Rule in Law, that when the Right of tithes ſhall be tried in the Spiritual Court, & the Spirit. Court hath juriſdiction therof that our Courts ſhall be oulted of the Juriſdiction, 35 H. 6. 47. 38 H. 6. 21. 2 E. 4. 15. 22 E. 4. 23. 38 E. 3. 36. 14 H. 7. 17. 13 H. 2. Juriſd. 19. but that is when debate is between Parſon and Vicar, or when all is in one Pariſh, but when they are in ſeverall Pariſhes, then this Court ſhall not be oulted of the Juriſdiction. See 12 H. 2. to Juriſdiction 17. 13 R. 2. ibid. 19. 7 H. 4. 34. 14 H. 4. 17. 38 E. 3. 56. 42 E. 3. 12. And yet there is a Canon expreſſly againſt this, which ſee in Linwood titulo de penis 55. And ſo fol. 227, 228. amongſt the Canons or Conſtitutions of Bonface, An. Dom. 1277. And the cauſes wherefore the Judges of the Common Law would not permit the Eccleſiaſticall Judges to try Modum Decimandi, being pleaded in their Court is, becauſe that if the Recompence

pence which is to be given to the Parſon in ſatisfaction of his tythes, doth not amount to the value of the Tythes in kinde, they would overthrow the ſame: And that alſo appeareth by Linwood amongſt the Conſtitutions Simonis Mephum, tit. de Decimis cap. Quoniam propter, fo. 139. 6. verbo Conſuetudines, Conſuetudo ut non ſolvantur, aut minus plene ſolvantur Decimæ non valet: and ibidem ſecundum alios, Quod in Decimis realibus, non valet Conſuetudo ut ſolvatur minus decima parte, ſed in perſonalibus, &c. And ibidem Litt. M. verbo, Integre, faciunt expreſſe contra opinionem quorundum Theologorum, qui dicunt ſufficere aliquid dari pro Decima. And that is the true Reaſon in both the ſaid Caſes, ſcil. de modo Decimandi, & de Limitibus Parochiorum, &c. that they would not adjudg according to their Canons; and therefore a Prohibition lieth: and therewith agreeth 8 E. 4. 14. and the other Books abovesaid, and infinite preſidents; and the rather after the Statute of 2 E. 6. cap. 13. And alſo the Cuſtoms of the Realm are part of the Laws of the Realm; and therefore they ſhall be tryed by the Common Law, as is aforeſaid: See 7 E. 6. Dyer 79. and 18 Eliz. Dyer 349. the Opinion of all the Juſtices.

Note this difference; Although that the parties do admit the Juriſdiction of the Court, yet upon the pleading, if the right of the Tythes ſhall come in debate, there this Court ſhall be ouſted of the Juriſdiction, & the Spiritual Court ſhall have Juriſdiction: But when the right of tythes cometh in debate, and the Spiritual Court cannot have Juriſdiction or Conuſance of it, as where a Lay-man is Plaintiff as Farmor, or Defendant as Servant of the Parſon, as a Lay man Farmor cannot ſue there, nor he who juſtifies as Servant cannot be ſued in Treſpaſs: But if the Suit be between Parſon and Vicar, or Parſon and Parſon, and other Spiritual perſons, if the Kings Court be ouſted of the Juriſdiction after ſeverance of the ninth part; yet the Libel ought to be for ſubſtraction of Tythes, for of that they have juriſdiction, and not of Tythes ſevered from the nine parts; for that ſhall be in Caſe of a *Præmunire*, and it appeareth to the Common Law: See 16 H. 2. in the Caſe of Mortuary. Vide Decretalia Sexti, Lib. 3. tit. de Decimis, cap. 1. fo. 130. Col. 4. Et ſumma Angelica, fo. 72.

VI. Mich. 6 Jacob. in the Exchequer.

Baron and Boys Caſe. 3. 214.

Sur Stat. 2 E. 6. cap. 14. of *Ingroſſers.*

IN the Caſe between Baron and Boys, in an Information upon the Statute of 5 E. 6. cap. 14. of Ingroſſers, after Verdict it was found for the Informer, That the Defendant had ingroſſed Apples againſt the ſaid Act: The Barons of the Exchequer held clearly, That Apples were not within the ſaid Act, and gave Judgment againſt the Informer upon the matter apparent to them, and cauſed the ſame to be entered in the Margent of the Record where the Judgment was given: and the Informer brought a Writ of Error in the Exchequer chamber, and the only Queſtion was, Whether Apples were within the ſaid Act? the letter of which is, That whatſoever perſon or perſons, &c. ſhall ingroſs or get into his or their hands, by buying, contracting, or promiſe, taking (other then by Demiſe, Grant or Leaſe of Land, or Tythe) any Corn growing in the Fields, or any other Corn or grain, Butter, Cheeſe, Fiſh, or other dead Victual within the Realm of England, to the intent to ſell the ſame again, ſhall be accepted, &c. an unlawful Ingroſſer. And although that the Statute of 2 E. 6. cap. 15. made againſt Sellers of Victual, which for their great gain conſpire, &c. numbereth Butchers, Brewers, Bakers, Cooks, Coſtermongers and Fruterers, as Victualers: yet Apples are not dead Victuals within the Statute of 5 E. 6. For the Buyers and Sellers of Corn and other Victuals have divers Proviſoes and Qualifications for them, as it appeareth by the ſaid Act, but

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Coſtermongers and Fruiterers have not any Proviſo for them: alſo, always after the ſaid Act they have bought Apples and other Fruits by Ingroſs, and ſold them again, and before this time no Information was exhibited for them, no more then for Plums or other fruit, which ſerveth more for delicacy then for neceſſary Food. But the Statute of 5 E. 6. is to be intended of things neceſſary and of common uſe for the ſuſtenance of man: and therefore the words are, Corn, Grain, Butter, Cheeſe, or other dead Victual: which is as much to ſay, as Victual of like quality, that is, of like neceſſary and common uſe: But the Statute of 2 E. 6. cap. 15. made againſt Conſpiracies to enhaunce the prices, was done and made by expreſs words, to extend it to things which are more of pleaſure then of profit: So it was ſaid, That of thoſe Fruits a man cannot be a Foreſtaller within this Act of 5 E. 6. for in the ſame Branch the words are, any Merchandize, Victual, or any other thing. But this was not reſolved by the Juſtices, becauſe that the Information was conceived upon that branch of the Statute concerning Ingroſſers.

VII. Hill. 27 Eliz. in the Chancery.

Fine. Dower. Relation.

HIllary Term, the 27 of Eliz. in the Chancery the Caſe was thus: One Ninian Menvil ſeiſed of certain Lands in Fee, took a wife, and levyed a Fine of the ſaid Lands with proclamations, and afterwards was indicted and out-lawed of High Treaſon, and dyed: The Conuſees convey the Lands to the Queen, who is now ſeiſed, the five years paſs after the death of the Husband: The Daughters and Heirs of the ſaid Ninian, in a Writ of Error in the Kings Bench, reverſe the ſaid Attainder, M. 26 and 27 Eliz. laſt paſt: and thereupon the Wife ſueth to the Queen (who was ſeiſed of the ſaid Land as aforeſaid) by Petition containing all the ſpecial matter, ſcil. the Fine with proclamations, and the five years paſſed, after the death of her Husband, the Attainder and the reverſal of it: and her own title, ſcil. her marriage, and the ſeiſin of her Husband before the Fine: And the Petition being endorſed by the Queen, Fiat droit aux parties, &c. the ſame was ſent into the Chancery, as the manner is.

And in this caſe divers Objections were made againſt the Demandant.

1. That the ſaid Fine with proclamations ſhould bar the Wife of her Dower, and the Attainder of her Husband ſhould not help her; for as long as the Attainder doth remain in force, the ſame was a bar alſo of her Dower, ſo as there was a double bar to the Wife, viz. the Fine levyed with proclamations, and the five years paſt after the death of her Husband, and the Attainder of her Husband of his Treaſon. But admit that the Attainder of the Husband ſhall avail the Wife in ſome manner, when the ſame is now reverſed in a Writ of Error, and now upon the matter is in Judgment of Law, as if no Attainder had been: and againſt that a man might plead, That there is no ſuch Record, becauſe that the firſt Record is reverſed, and utterly diſaffirmed and annihilated, and now by Relation made no Record ab initio: and therewith agreeth the Book of 4 H. 7. 11. for the words of the Judgment in a Writ of Error are, Quod Judicium prædict. & Errores prædict. & alios in Recordo, &c. revocetur & admittetur, &c. & quod ipſa ad poſſeſſionem ſuam ſive ſeiſinam ſuam (as the caſe requireth) tenementorum

mentorum ſuorum prædictorum, una cum exitibus & proficuis inde a tempore Judicii prædict. reddit, præcept. & ad omnia quæ occaſione Judicii illius omiſit reſtituatur. By which it appeareth, that the firſt Judgment, which was originally imperfect and erroneous, is for the ſame Errors now annulled and revoked ab initio, and the party againſt whom the Judgment was given reſtored to his poſſeſſion, and to all the mean profits, from the time of the erroneous Judgment given, until the Judgment in the Writ of Error, ſo as the Reverſal hath a Retroſpect to the firſt Judgment, as if no Judgment had been given: And therefore the Caſe in 4 H. 7. 10. b. the caſe is, A. ſeiſed of Land in Fee, was attainted of High Treaſon, and the King granted the Land to B. and afterwards A. committed Treſpaſs upon the Land, and afterwards by Parliament A. was reſtored, and the Attainder made void, as if no Act had been; and ſhall be as available and ample to A. as if no Attainder had been: and afterwards B. bringeth Treſpaſs for the Treſpaſs Meſne; and it was adjudged in 10 H. 7. fo. 22. b. That the Action of Treſpaſs was not maintainable, becauſe that the Attainder was diſaffirmed and annulled ab initio. And in 4 H. 7. 10. it is holden, That after a Judgment reverſed in a Writ of Error, he who recovered the Land by Erroneous Judgment ſhall not have an Action of Treſpaſs for a Treſpaſs Mean, which was ſaid, was all one with the principal caſe in 4 H. 7. 10. and divers other Caſes were put upon the ſame ground.

It was ſecondly objected, That the Wife could not have a Petition, becauſe there was not any Office by which her title of Dower was found, ſcil. her marriage, the ſeiſin of her Husband, and death: for it was ſaid, that although ſhe was marryed, yet if her Husband was not ſeiſed after the age that ſhe is Dowable, ſhe ſhall not have Dower: as if a man ſeiſed of Land in Fee, taketh to Wife a woman of eight years, and afterwards before her age of nine years, the Husband alieneth the Lands in Fee, and afterwards the woman attaineth to the age of nine years, and the Husband dyeth; it was ſaid, that the woman ſhall not be endowed. And that the title of him who ſueth by Petition ought to be found by Office, appeareth by the Books in 11 H. 4. 52. 29 Aſſ. 31. 30 Aſſ. 28. 46 E. 3. bre. 618. 9 H. 7. 24. &c.

As to the firſt Objection, it was reſolved, That the Wife ſhould be endowed, and that the Fine with proclamations was not a bar unto her, and yet it was reſolved that the Act of 4 H. 7. cap. 24. ſhall bar a woman of her Dower by a Fine levyed by her Husband with proclamations, if the woman doth not bring her Writ of Dower within five years after the death of her Husband, as it was adjudged Hill. 4 H. 8. Rot. 344. in the Common Pleas, and 5 Eliz. Dyer 224. For by the Act, the right and title of a Feme Covert is ſaved, ſo that ſhe take her action within 5. years after ſhe become uncovert, &c. but it was reſolved, That the wife was not to be ayded by that ſaving: for in reſpect of the ſaid Attainder of her Husband of Treaſon, ſhe had not any right of Dower at the time of the death of her Husband, nor can ſhe after the death of her Husband bring an Action, or proſecute an Action to recover her Dower, according to the direction and ſaving of the ſaid Act: But it was reſolved, That the Wife was to be ayded by another former Saving in the ſame Act, viz. And ſaving to all other perſons (ſcil. who were not parties to the Fine) ſuch action, right, title, claym, and intereſt in or to the ſaid Lands, &c. as ſhall firſt grow, remain, deſcend, or come to them after the ſaid Fine ingroſſed and proclamations made,

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by force of any Gift in Tail, or by any other cauſe or matter had and made before the ſaid Fine levied, ſo that they take their Actions and purſue their right and Title according to the Law, within five years next after ſuch Action, Right, Claim, Title, or Intereſt to them accrued, deſcended, fallen, or come, &c. And in this caſe the Action and right of Dower accrued to the wife after the reverſall of the Attainder, by reaſon of a Title of Record before the Fine by reaſon of the ſeiſin in Fee (had) and the Marriage (made) before the Fine levied, according to the intention and meaning of the ſaid Act.

And as to the ſaid point of Relation, It was reſolved, That ſometimes by conſtruction of Law a thing ſhall relate ab initio to ſome intent, and to ſome intent not; For Relatio eſt fictio Juris, to do a thing which was and had eſſence, to be annulled ab initio, betwixt the ſame parties to advance a Right, or Ut res magis valeat quam pereat: But the Law will never make ſuch a conſtruction to advance a wrong, which the Law abhorreth, Or to defeat Collaterall Acts which are lawfull and principally if they do concern Strangers: And this appeareth in this Caſe (ſcil.) when an erroneous Judgment is reverſed by a Writ of Error: For true it is as it hath been ſaid, That as unto the mean Profits, the ſame ſhall have relation by conſtruction of Law, untill the time of the firſt Judgment given, and that is to favour Juſtice and to advance the right of him who hath wrong by the erroneous Judgment. But if any ſtranger hath done a Treſpaſſe upon the Land in the mean time, he who recovereth after the Reverſall ſhall have an Action of Treſpaſſe againſt the Treſpaſſors, and if the Defendant pleadeth that there is no ſuch Record, the Plaintiff ſhall ſhew the ſpeciall matter, and ſhall maintain his Action, ſo as unto the Treſpaſſors who are wrong Doers, the Law ſhall not make any conſtruction by way of relation ab initio to excuſe them, for then the Law by a fiction and conſtruction ſhould do wrong to him who recovereth by the firſt Judgment: And for the better apprehending of the Law on this point, it is to know, That when any man recovers any poſſeſſion or ſeiſin of Land, in any Action by erroneous Judgment, and afterwards the Judgment is reverſed as is ſaid before, and upon that the Plaintiff in the Writ of Error ſhall have a Writ of Reſtitution, and that Writ recites the firſt recovery, and the reverſall of it in the Writ of Error, is, that the Plaintiff in the Writ of Error ſhall be reſtored to his poſſeſſion and ſeiſin, Una cum exitibus thereof from the time of the Judgment, &c. Tibi præcipimus quod eadem A. ad plenariam ſeiſinam tenementorum prædict. cum pertinentiis ſine dilatione reſtitui facias, & per ſacramentum proborum & legalium hominum de Com. ſuo diligenter inquiras ad quantum exitus & proficua tenementorum illorum cum pertinentiis a tempore falſi Judicii prædict. reddit, uſque ad Oct. Sanct. Mich. anno, &c. quo die judcium illud per præfat. Juſticiar. noſtros revocat. fuit, ſe attingunt, juxta verum valorem eorundem, eadem exitus, & proficua de terris & catallis prædict. B. in baliva tua fieri facias, & denarios inde præfato A. pro exitibus et proficuis tenementorum per eundem B. dicto medio tempore percept. ſine dilatione haberi facias: Et qualiter hoc præceptum noſtrum fuerit execut conſtare facias, &c. in Octab. &c. By which it appeareth, That the Plaintiff in the Writ of Error ſhall have reſtitution againſt him who recovereth of all the mean Profits, without any regard by them taken, for the Plaintiff in the Writ of Error cannot have any remedy againſt any ſtranger, but only againſt him who is party to the Writ of Error, and therefore the words of the ſaid Writ

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command the Sheriff to enquire of the Iſſues and Profits generally, between the Reverſal and the Judgment, with all which he who recovers ſhall be charged: and as the Law chargeth him with all the mean profits, ſo the Law gives to him remedy notwithſtanding the Reverſal againſt all Treſpaſſors in the interim, for otherwiſe the Law ſhould make a conſtruction by relation to diſcharge them who are wrong doers, and to charge him who recovers with the whole, who peradventure hath good right, and who entereth by the Judgment of the Law, which peradventure is reverſed for want of form, or negligence or ignorance of a Clark. And therefore as to that purpoſe the Judgment ſhall not be reverſed ab initio by a Fiction of Law, but as the truth was, the ſame ſtands in force until it was reverſed: and therefore the Plaintiff in the Writ of Error after the Reverſal ſhall have any Action of Treſpaſs for a Treſpaſs mean, becauſe he ſhall recover all the mean profits againſt him who recovered, nor he recovereth after ſhall be barred of his Action of Treſpaſs for a Treſpaſs mean, by reaſon that his recovery is reverſed, becauſe he ſhall anſwer for all the mean profits to the Plaintiff in the Writ of Error: and therewith agreeth Brian Chief Juſtice, 4 H. 7. 12. a.

Note Reader, If you would underſtand the true ſence and Judgment of the Law, it is needful for you to know the true Entries of Judgments, and the Entries of all proceedings in Law, and the manner and the matter of Writs of Execution of ſuch Judgments. See Butler and Bakers Caſe, in the third part of my Reports, good matter concerning Relations. So as it was reſolved in the Caſe at Bar, Although that to ſome intent the Reverſal hath relation, yet to bar the Wife of her Dower by Fiction of Law, by the Fine with proclamations, and five years paſt after the death of her Husband, when in truth ſhe had not cauſe of Action, nor any right or title ſo long as the Attainder ſtood in force, ſhould be to do wrong by a Fiction of Law, and to bar the Wife, who was a meer ſtranger, and who had not any means, to have any Relief until the Attainder was reverſed.

And as unto the other point or Objection, that the Demandant on the Petition ought to have an Office found for her, it was reſolved, that it needed not in this caſe, becauſe that the title of Dower ſtood with the Queens title, and affirmed it, otherwiſe if the title of the Demandant in the Petition had diſaffirmed the Queens title: alſo in this Caſe, the Queen was not entituled by any Office that the Wife ſhould be driven to traverſe it, &c. for then ſhe ought to have had an Office to finde her title: But in Caſe of Dower, although that Office had been found for the Queen which doth not diſaffirm the title of Dower, in ſuch caſe the Wife ſhall have her Petition without Office, becauſe that Dower is favored in Law, ſhe claiming but onely for term of life, and affirming the title of the Queen. See the Sadlers Caſe in the fourth part of my Reports.

And the caſe which was put on the other ſide was utterly denyed by the Court, for it was reſolved, That if a man ſeiſed of Lands in Fee, taketh a Wife of eight years of age, and alieneth his Lands, and afterwards the Wife attaineth to the age of nine years, and afterwards the Husband dyeth, that the Wife ſhall be endowed: For although at the time of the alienation the Wife was not dowable, yet for as much as the marriage, and ſeiſin in Fee, was before the alienation, and the title of Dower is not conſummate until the death of her Husband, ſo as now there was marriage, ſeiſin of Fee, age of nine years during

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the Coverture, and the death of the Husband, for that cauſe ſhe ſhall be endowed: For it is not requiſite that the marriage, ſeiſin and age concur together all at one time, but it is ſufficient if they happen during the Coverture: So if a man ſeiſed of Lands in Fee take a Wife, and afterwards ſhe elopes from her Husband, now ſhe is barrable of her Dower, if during the Elopement the Husband alieneth, and after the Wife is reconciled, the Wife ſhall be endowed: So if a man hath iſſue by his Wife, and the iſſue dyeth, and afterwards Land deſcendeth to the Wife, or the Wife purchaſeth Lands in Fee, and dyeth without any other iſſue, the Husband (for the iſſue which he had before the Diſcent or purchaſe) ſhall be Tenant by the curteſie, for it is ſufficient if he have iſſue, and that the Wife be ſeiſed during the Coverture, although that it be at ſeveral times. But if a man taketh an Alien to Wife, and afterwards he alieneth his Lands, and afterwards ſhe is made a Denizen, ſhe ſhall not be endowed, for ſhe was abſolutely diſabled by the Law, and by her birth not capable of Dower, but her capacity and ability began onely by her Denization, but in the other caſe there was not any incapacity or diſability in the perſon, but onely a tempozary Bar, until ſuch age or reconcilement, which being accompliſhed the tempozary Bar ceaſeth: As if a man ſeiſed of Lands in Fee, taketh a Wife, and afterwards the Wife is attainted of Felony, and afterwards the Husband alieneth, and afterwards the Wife is pardoned, and afterwards the Husband dyeth, the Wife ſhall be endowed, for by her birth ſhe was not uncapable, but was lawfully by her marriage and ſeiſin in Fee entituled to have Dower; and therefore when the impediment is removed, ſhe ſhall be endowed.

VIII. Trinit. 44 Eliz. In the Kings-Bench.

Sprat and Heals Caſe.

Tythes. Covin.

JOhn Sprat Libelled in the Spiritual Court againſt Walter Heal for ſubſtraction of Tythes, the Defendant in the Spiritual Court pleaded, that he had divided the Tythes from the nine parts: and then the Plaintiff made addition to the Libel (in the nature of a Replication) ſcil. That the Defendant divided the Tythes from the nine parts, quod prædict. the Plaintiff non fatetur, ſed prorſus diffitetur; yet preſently after this pretended diviſion in fraudem legis, he took and carryed away the ſame Tythes, and converted them to his own uſe; and the Plaintiff thereupon obtained ſentence in the Spiritual Court, and to recover the treble value according to the Statute of 2 E. 6. cap. 13. And thereupon Heal made a ſurmiſe, that he had divided his Tythes, and that the Plaintiff ought to ſue in the Spiritual Court for the double value, and at the Common Law for the treble value: And it was objected, That when the Owner of the Corn divides them, then they are become Lay-Chattels, for the taking of which an Action lieth at the Common Law: and therefore after ſeverance from the nine parts, the Parſon ſhall not ſue for them in the Spiritual Court: But it was reſolved by the whole Court, That the ſaid diviſion or ſeverance mentioned in the Libel, was not any diviſion or ſeverance within the Statute of 2 E. 6. cap. 13. For the ſame Act provides, That every of the Kings Subjects ſhall from henceforth truly and juſtly without fraud

Lab. 8. Ro 643.

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or guile, divide, ſet out, yeild, and pay all manner of other prædiall Tithes in their proper Land, ſo as when he divides them to the purpoſe to carry them away, he doth not divide them juſtly and truly without fraud or guile, but here is fraud and guile, and no way a juſt diviſion, and therefore the ſame is out of the Statute, for the makers of the Statute reſpect quo animo, he divides them (ſcil.) with a mind and intention that the Parſon carry them away, as in right he ought, or with a mind and intention that he himſelf carry them away which he ought not, Quia fraus & dolus alicui prodeſſe, aut ſimplicitas alicui obeſſe non debet: And the ſame is Crimen Stellionatum, which we call fraudem rem & impoſteram: And where the words of the Statute are divided, ſet out, &c. their prædiall Tithes, &c. And if any perſon carrieth away his Corn and Hay, and his and their prædiall Tithes, &c. And to make an evaſion out of theſe words, this Invention was deviſed, the Owner of the Corn by Covin ſold his Corn before ſeverance to another, who as Servant to the Vendee reaped the Corn, and carried away the Corn, without any ſeverance, pretending that neither the Vendee, becauſe he did not carry them away, nor the Vendor becauſe he had no property in them, for he did not carry away his Corn, or his prædiall Tithes, ſhould be within that Statute: But it was reſolved, that the Vendor ſhould be charged in that caſe with the penalty of the Statute, for he carrieth them away, and his fraud and covin ſhould not help him or availe him. See 8 E. 3. 290. A reall Action brought by a man of Religion by Colluſion, although that he hath right, yet he ſhall not have execution, 9 H. 6. 41. A recovery upon a good Title by Colluſion, ſhall not abate the Writ, 33 H. 6. 5. A ſale in open Market by Covin ſhall not bind the property of a ſtranger: But it was reſolved, That the Plaintiff could not ſue in the Spirituall Court for the treble value, but for the double value that he might.

IX. Hill. 6 Jacobi, In the Common Pleas.

Neale and Rowſes Caſe.

Extortion. Stat. 21 H. 8. cap. 5.

AT a Niſi prius in London, before my ſelf this Term, the Caſe was this: Edward Neale informed upon the Statute of 21 *H.* 8. cap. 5. which Plea begun Mich. 6 Jac. Rot. 1031. againſt James Rowſe Commiſſary and Officiall within the Archdeaconry of Huntington, within the Diocis of Lincoln, and having probat of Wills and Teſtaments, &c. within the ſame Archdeaconry; And that Nicholas Neale, the third year of the Raign of the King that now is, made his Teſtament and laſt Will in writing, and made the Plaintiff his Executor, and died poſſeſſed of Goods and Chattells to the value of a hundred and fifty pounds: The Defendant then Commiſſary and Officiall, &c. the twenty third of Febr. 1605. at the Pariſh of S. Mary Bow, Teſtament. prædict. probavit, inſinuavit, regiſtravit & ſigillavit; ac per manus cujuſdem Thomæ Nicke tunc miniſtri ipſius Jacobi Rowſe in ea parte deputat. & authorizat. 14. s. 10 d. pro probatione, inſinuatione & regiſtratione Teſtamenti prædict. de eodem Edwardo, &c. qui tam, &c. Colore Officii ſui prædict. ad tunc & ibidem extortive recepit, & habuit contra formam ſtatuti prædict. with this that the ſaid Edward, qui tam, &c. will aver That the writing of the ſaid Teſtament according to the rate of a peny for every ten Lines of the ſaid Teſtament, every line thereof containing

ing in length ten Inches, non attingebat, to the ſumme of twelve ſhillings four pence, according to the form of the Statute aforeſaid, &c. The Defendant pleaded Nihil debet, And at the Niſi prius, the Evidence of two Witneſſes was, That the Plaintiff cauſed the ſaid Teſtament which was in Paper, to be ingroſſed in Parchment; And the Plaintiff offered both to the ſaid Rowſe, the Officiall, to be proved, and he anſwered, That he would prove it, if his Fees ſhall be paid to him, And the Plaintiff asked him what were his Fees, and he wrote them in a paper, which amounted to fourteen ſhillings ten pence for the Probat, inſinuation, Regiſtring, and ſealing: And thereupon the Plaintiff layed upon the Table twenty ſhillings, and deſired him to take as much as was due to him, and all that was in the houſe of the Officiall; But he would receive nothing there, but appointed the Plaintiff to come in Court, where he would receive his Fees, and accordingly the Plaintiff came to him in Court, and prayed to have the ſaid Will proved; And the Defendant required the ſaid Nicke his Miniſter, to take of him for the probation, inſinuation, regiſtring, and ſealing, fourteen ſhillings ten pence, and thereupon he put the Seale of his Office to the ſaid Parchment ingroſſed, which the Plaintiff brought with him, and which he delivered to the Defendant. And it was objected, That this Caſe was out of the ſaid Statute, for thereby as to this purpoſe, it is provided, viz. And where the Goods of the Teſtator &c. amount above the value of forty pounds, That then the Biſhop, nor Ordinary by him or themſelves, nor any of his or their Regiſters, Scribes, Prayſers, Summoners, Apparators, or any other their Miniſters, for the probation, inſinuation, and approbation of any Teſtament or Teſtaments, &c. for the regiſtring, ſealing, writing, prayſing, making of Inventories, making Acquittances, Fines, or any thing concerning the ſame Probate of Teſtaments, ſhall take or cauſe to be taken of any perſon or perſons, but only foure ſhillings, and not above, whereof to the Biſhop, ordinary, &c. for him and his Miniſters two ſhillings ſix pence, and not above, and two ſhillings ſix pence to the Scribe for Regiſtring of the ſame, &c. And it was objected by the Councell of the Defendant, that the Defendant did not take the fourteen ſhillings ten pence for the probation, inſinuation, regiſtring, or ſealing of the Teſtament, for no Probat was written upon the Teſtament it ſelf, nor any Seale put to it, but the Teſtament was ingroſſed in Parchment, and the Probat and Seale put to the Tranſcript ingroſſed, and not to the Teſtament it ſelf, and ſo out of the Statute; and the Statute extends only, when the Probat and Seale is put to the Teſtament it ſelf, and for the ingroſſing of it after the Probate, no certain Fee is provided by the Statute; But for the Regiſtring of it after it is proved, there is an expreſſe Fee in the Statute: But I conceived that the ſaid taking of the fourteen ſhillings ten pence in the Caſe at Bar, was directly againſt the Statute. For the Act is in the Negative, and if the Executor requireth the Teſtament to be ingroſſed in Parchment, he ought to agree with him who he requireth to do it, as he may: But the Ordinary, Officiall, &c. ought not to exact any Fee for the ſame of the party as a thing due to him, for divers Cauſes:

1. Becauſe the words of the Act are expreſſed, for the Probation, &c. and for the regiſtring, ſealing, writing, prayſing, making of Inventories, Fines, giving of Acquittances, &c. which word (writing) extends expreſly to this Caſe.

2. The words are, Or any thing concerning the ſame Probate, and when the Seal and Probate is put to the Tranſcript, the ſame without queſtion concerns the Probate, for the Probat is not put to any writing but only to that, therefore the ſame concerns the Probate.

3. Such a Conſtruction ſhould make the Act idle and vain, for if the Ordinary, Officiall,&c. might take as much as he pleaſeth for the ingroſſing done by his Miniſters as a Fee due to him, all the purview of the Statute which is penned ſo preciſely concerning perſons, ſcil. Biſhops, Ordinaries, and all perſons who have power to prove Wills and Teſtaments, Regiſters, Scribes, Summoners, Apparations, or any other the Miniſters, as for the thing it ſelf, ſcil. the probation, inſinuation, approbation, regiſtring, ſealing, writing, praying, making of Inventories, Fines, giving of Acquittances, or any other thing concerning the ſame, ſhould be all in vain, by that evaſion of Tranſcribing of it, as well againſt the expreſſe Letter of the Act as the intention and moving of it: Alſo the Statute ſaith five ſhillings, and not above, ſo as the manner of preciſe penning of it excludes all nice evaſions: And the Act ought to be expounded to ſuppreſſe Extortion, which is a great affliction, and impoveriſhing of the poor Subjects.

4. As this Caſe is, he annexeth the Probate and Seale to the Tranſcript ingroſſed, which the Plaintiff brought with him and offered to the Defendant; ſo as the Caſe at Bar was without queſtion, And generally the Ordinary, Officiall, &c. cannot exact or take any Fee for any thing which concerns the Probate of a Will or Teſtament, but that which the Statute limits: And afterwards the Jury found for the Plaintiff; and of ſuch opinion was Walmeſley, Warberton, Daniel, and Foſter Juſtices, the next Term in all things, But upon exception in Arreſt of Judgment for not purſuing of the Act, in the Information; Judgment is not yet given,&c.

X. Hillar. Anno 6 Jacobi Regis, In the Common Pleas.

Aide to make the Kings eldeſt Son Knight.

NOta that in this Terme, a Queſtion was moved to the Court, which was this: If Tenant in Burgage ſhould pay Ayde unto the King to make his eldeſt Son Knight. And the Point reſts upon this, If the Tenure in Burgage be a Tenure in Socage; For by the ancient Commmon Law every Tenant in Knights Service, and every Tenant in Socage, was to give to his Lord a reaſonable Ayde to make his eldeſt Son a Knight, and to marry his eldeſt Daughter, and that was incertain at the Common Law, and alſo incertain when the ſame ſhould be paid. And this appeareth by Glanvil, Lib. 9. cap. 8. fol. 70. who wrote in the time of Henry the ſecond, Nihil autem certum Statutum & de hujuſmodi auxiliis dandis, vel exigendis, &c. ſunt alii præterea Caſus in quibus licet Dominis auxilia ſolvenda ſunt certa forma præſcripta ab hominibus ſuiis ut filius ſuus & hæres fiat miles. vel ſi primogenitam ſuam filiam maritaverit,&c. And in the beginning of the Chapter, it is called Rationabile Auxilium, becauſe that then it was not certain, but to be moderated by reaſon in reſpect of Circumſtances: And by the Preamble of the Statute of Weſt. 1. An. 3 E. 1. cap. 35. Where it is ſaid, Foraſmuch as before that time reaſonable Ayde to make ones Son Knight, or to marry his Daughter, was never put in certain,

Vide F.N.B. 82.ac.

See the ſtatute of 27 H.8 cap 10. of uſes in the Preamble, concerning Aides, to make the eldeſt Son Knight, and to marry the Daughter.

certain, nor when the ſame ought to be payd, nor how much be taken; the ſaid Act put the ſaid two incertainties to a certainty, 1. That for a whole Knights Fee there be taken but 20 s. and of 20 l. Lands holden in Socage 20 s. and of more, more, and of leſs, leſs, according to the rate; by which the Ayd it ſelf was ſet certain. 2. That none might levy ſuch Ayd, to make his ſon a Knight, until his ſon be of the age of fifteen years; nor to marry his daughter, until ſhe be of the age of ſeven years. And Fleta, who wrote after the ſaid Act, calls them rationabilia auxilia ad filium militem faciendum, vel ad filiam primogenitam maritandum: And by the Statute of 25 E. 1. where it is provided, That no Tayes ſhall be taken but by common conſent of the Realm, there is an exception of the ancient Ayds, &c. which is to be intended of theſe Ayds due unto the King by the ancient Common Law: But notwithſtanding the ſaid Act of VVeſtm. 1. it was doubted, whether the King, becauſe he is not expreſſly named, were bound by it; and therefore in the twentieth year of E. 3. the King took an Ayd of 40 s. of every Knights Fee for to make the Black Prince Knight, and nothing then of Lands holden in Socage; and to take away all queſtion concerning the ſame, the ſame was confirmed to him in Parliament: and afterwards, anno 25 E. 3. cap. 11. it is enacted, That reaſonable Ayd to make the Kings eldeſt Son Knight, and to marry his eldeſt Daughter, ſhall be demanded and levyed after the form of the Statute made thereof, and not in other manner, that is to ſay, Of every Fee holden of the King without Mean 20 s. and no more, and of every 20 l. Land holden of the King without Mean in Socage 20 s. and no more. Now Littleton, lib. 2. cap. 10. fol. 36. b. Burgage Tenure is, where an ancient Borough is of which the King is Lord; and thoſe who have Tenements within the Borough, hold of the King their Tenements, that every Tenant for his Tenement ought to pay to the King a certain Rent: and ſuch Tenure is but Tenure in Socage; and all Socage Land is contributary to Ayd, and therefore a Tenant in Burgage ſhall be contributary to it.

And it is to be obſerved, and ſo it appeareth in the Regiſter, fo. 1, & 2. That in a Writ of Right, if the Lands or Tenements are holden by Knights ſervice, it is ſaid, Quas clamat tenere de te per ſervitium unius feodi Militis: and if the Lands be holden in Socage, the Writ is, Quis clamat tenere de te per liberum ſervitium unius libri cumini, &c. ſo as Socage Tenure in all Writs is called Liberum ſervitium. And by the Writ of Ayd, Fitz. N. B. 82. it is commanded to the Sheriff, Quod juſte, &c. facias habere A. rationabile Auxilium de Militibus, & liberis tenentibus ſuis in Baliva tua, &c. ſo as the ſame Writ makes a diſtinction of Knights ſervice by the name of Militibus, and of Socage by the name of Liberis tenentibus. And in the Regiſter, fol. 2. 6. the Writ of Right for a Houſe in London (which is holden of the King in Burgage) is in theſe words, Rex, Majori, vel Cuſtodi & Vicecom. London: Præcipimus vobis quod ſine dilatione teneatis G. de uno Meſſuagio, &c. in London, quæ clamat tenere de nobis per liberum ſervitium, &c. which proves, That Tenure in Burgage is a Tenure in Socage: But it appeareth by the Books of Avowry 26. and 10 H. 6. ſo Ancient Demeſne 11. it was reſolved by all the Juſtices in the Exchequer Chamber, That no Tenure ſhould pay for a reaſonable Ayd to marry the Daughter, or to make the Son a Knight, but Tenure by Knights ſervice, and Tenure by Socage; but not Tenure by Grand-ſerjanty, nor no other: and 13 H. 4. 34. agrees to the Caſe of Grand-

ſerjanty: and by the ſaid Books it appeareth, that Tenure by Frankalmoign, and Tenure by Divine Service, ſhall not pay, for they are none of them: but Tenure in Burgage is a Tenure in Socage; and therefore the ſaid Books prove, that ſuch a Tenure ſhall pay Ayd. And I conceive, that Tenure by Petit-Serjanty ſhall pay alſo Ayd: for Litt. lib. 2. cap. 8. fo. 36. ſays, That ſuch a Tenure is but Socage in effect: but Fitz. N. B. 83. a. avoucheth, 13 H. 4. 34. That Tenant by Petit-Serjanty ſhall not pay Ayd; but the Book onely extends to Grand-Serjanty: If the Houſes in a City or Borough are holden of the King in Burgage, and the King grant the Seignories to one, and the City or Borough to another to hold of him, then thoſe Houſes ſhall not be contributary to Ayd, for they are not immediately holden of the King, as is required by the Law.

And I conceive that he who holdeth a Rent of the King by Knights ſervice, or in Socage, ſhall pay Ayd; for the words of the Act of VVeſtm. 1. cap. 35. are, From henceforth of a whole Knights Fee onely be taken 20 s. of 20 l. Land holden in Socage 20 s. and the Mean is ſaid in ſuppoſition of Law to hold the Land: and it is not reaſon that the Tenant by his Feoffment before the Statute ſhould prejudice the Lord of his benefit. And although it was ſaid, that a Tenure in Socage, in ſervitium Socæ, as Littleton ſaith, and the ſame cannot be applyed to Houſes: to that it was anſwered, That the Land upon which the Houſe is built, or if the Houſe falleth down, may be made arable, and be ploughed. And a Rent may be holden in Socage, and yet it is not ſubject to be plowed, but by a poſſibility after words eſcheat to the Lord of the Land. See Huntington, Polidor Virgill. and Hollinſheds Chronicle, fol. 35. 15 H. 4. Ayd was levyed by Hen. 7. 1. to marry Mawd his eldeſt Daughter to the Emperor, viz. 3 l. of every Hide of Land, &c. And ſee The Grand Cuſtomary of Normandy, cap. 35. there is a Chapter of Ayds, whereof the firſt is, to make the eldeſt Son of his Lord a Knight; and the ſecond to marry his eldeſt Daughter. And ſee a Statute made in anno 19 H. 7. which beginneth thus, Item præfati Communes in Parliamento prædicto exiſtentes ex aſſenſu duorum Spiritualium & Temporalium in dicto Parliamento ſimiliter exiſten. conceſſerunt præfato Regi quandam pecuniæ ſummam in loco duorum rationabilium auxiliorum ſuæ Majeſtatis de jure debit. tam ratione creationis nobiliſſimi filii ſui primogeniti bonæ memoriæ, Domini Arthuri nuper Principis VValliæ, quam ratione Matrimonii & traductionis nobiliſſimi Principis Margaritæ filiæ ſuæ primogenit. quam etiam multiplicare pro Regni ſui perpetua pace & tranquillitate, &c. certis viis & modis levand. cujus quidem conceſſionis Tenor, &c. ſequitur in hæc verba: For as much as the King our Soveraign Lord is rightfully intituled to have two reaſonable Ayds according to the Laws of this Land, the one for the making Knight the right honorable his firſt begotten Son Arthur, late Prince of VVales deceaſed: and the other, for that the marriage of the Right Noble Princeſs his firſt begotten Daughter Margaret, now married to the King of Scots: and alſo that his Highneſs hath born great and ineſtimable charges for the defence of the Realm, &c. conſidering the premiſſes. And if the ſame Ayds ſhould be levyed, and had by reaſon of their Tenures according to the ancient Laws of the Land, ſhould be to them doubtful and uncertain, and great unquietneſs, for the ſearch and not knowledg of their ſeveral Tenures, and their Lands chargeable to the ſame, have made humble Petition unto his Highneſs, graciouſly to accept and take of them the ſum of 40000 l.

as

as well in recompence and ſatisfaction of the ſaid two Ayds, as for the ſaid great and ineſtimable charges, &c. as is aforeſaid. The King, to eſchew and avoyd the great vexation, troubles and unquietneſs which to them ſhould have enſued, if the ſaid Ayds were levyed after the ancient Laws: and for the good and acceptable ſervices of the Nobles of this Realm, and other his faithful Subjects, in their own perſons and otherwiſe, done to his Grace, and thereby ſuſtained manifold coſts and charges, to his great honor and pleaſure, doth pardon the ſaid two Ayds, and accepteth the offer aforeſaid: and that the poorer ſort of his ſaid Commons ſhould not be contributary to the ſaid ſum of 40000 l. hath pardoned 10000 l. parcel thereof, and doth accept of 30000 l. in full ſatisfaction, &c. And that the Cities and Borroughs, Towns and places, being in every Shire not by themſelves accountable in the Exchequer for Fifteens and Tenths, be chargeable with the Shires, &c. And all Cities and Borroughs, not contributary, &c. but accountable by themſelves, &c. ſhall be chargeable by themſelves towards the payment of the ſaid 30000 l. with ſuch ſums as under the Act particularly appear, &c. And there under the Act appear the ſeveral Taxations of every ſeveral County, City, Borrough, &c. and that the City of London is tared to 618 l. 3 s. 5 d. the City of Norwich to 81. 6 s. 11 d. the City of Canterbury to 53 l. 13 s. 3 d. ob. Norfolk 285 l. 6 s. 10 d. Suffolk 1214 l. 5 s. 4 d. ob. &c. The ſum of all the ſums then aſſeſſed is 31648 l. whereof allowable for Fees and Wages of Commiſſioners and Collectors 651 l. 16 s. 2 d. and ſo remaineth 31006 l. 4 s. and 10 d. Note, that the Univerſities of Cambridg and Oxford, and the Colledg of Eaton be excepted.

See Rot. 30. H. 3. ex parte reman. Dom. Theſaur. in Scemino, in auxilio, nobis conceſſ. ad primogenitam filiam noſtram maritand. And note, that King Henry the third had Ayd granted to him in Parliament ad Iſabellam ſororem ſuam Imperatori maritand. but that was of Benevolence.

Rot. 42 H. 3. ibid. 6 Monſtrat R. Johannes le Francois Baro de Scaccario, quod cum Dominus Rex non caperet niſi 20 s. de integro feodo militis de auxilio ad primogenitam filiam ſuam maritand. Radol. fil. Rad. fil. Mich. injuſte exegit de eodem 30 s. ad primogenitam filiam ſuam maritand. pro duabus partibus, unius feodi militis, & averia ſua cepit, & ea detinet. Et ideo mandatum eſt Vic. Com. Bedd. & Buck. quod venire faciant, &c. prædict. R. ad reſpondendum eidem Johanni de prædict. tranſgreſſione, & prædict. averio, &c. So as it appeareth by this, that ſome held, that the Statute of Weſtm. 1. aforeſaid was but a confirmation of the Common Law, and that the King alſo ought not to take more: but that was doubted.

Ibid. in Regno. 2 E. 1. Rot. 3. de auxilio ad militiam, (which is meant of Knight of the Kings Son) in the time of Henry the third, & Iſabella Comitiſſa Albermarle, perdonata 116 l. 8 s. 7 d. pro eodem auxilio, quia Boldwinus de Inſula fratre ejus cujus hæres ipſa eſt fuit infra ætatem, & in cuſtodia ejus: & quia tenentes dictæ Iſabellæ onerentur per ſervitium militare de prædict. pecuniis. Note, that that was before the Statute of Weſt. 1. and by that it appeareth, That if one within age be in Ward of the King, he ſhall not be contributary to Ayd, but his Tenants which hold of him (and then held of the King by reaſon of Ward) ſhall pay Ayd unto the King, as it appeareth by that Record.

Ibid. 30 E. 1. Rex dilectis & fidelibus, Vic. Kanc. & Rico. de R. ſalutem

ſalutem, Sciatis, quod in primo die Junii anno Regni noſtri 18. Prælati, Comites, Barones, & cæteri Magnates, de regno noſtro conceditur, pro ſe & tota communitate ejuſdem Regni in pleno Parliamento noſtro, nobis conceſſerunt 40 s. de ſingulis feodis militum in dicto Regno ad auxilium ad primogenitam filiam noſtram maritand. levandos ſicut hujuſmodi auxilium alias in caſu conſil. levari conſuevit, cui quidem levationi faciend. pro dicta communitatis eaſiamento hucuſque ſuperſedimus faciend. gratioſe aſſignavimus vos ad prædictum auxilium, &c. Note, that his eldeſt Daughter was marryed to the Earl of Bar.

Note, that this double charge was in reſpect that they were diſcharged of any contribution for Socage, which I conceive was for the difficulty to finde the Socage Tenure.

Ibid. T. R. 34 E. 1. De auxilio conceſſo ad militiam filii Regis.

Ibid. Hill. 4 H. 4. Rot. 19. de rationabili auxilio de Will. Domino Roos, for the marriage of Blanch the Kings eldeſt Daughter, out of the Manor of Wragby in the County of Lincoln: The like M. Rot. 5. H. 4. Rot. 33. Lincoln. and Rot. 34. Lincoln, and Rot. 35. Lincoln, and Tr. R. 5. H. 4. Rot. 2. Kanc. and Rot. 3. Kanc. and Rot. 5. Kanc.

See ibid. P. R. 21 E. 3. Rot. Cantab. de auxilio ad filium Regis primogenitum faciend. per Epiſcopum Elienſem: by which it appeareth, that a Biſhop for his Lands which he holdeth by Knights ſervice, or Socage, ſhall pay Ayd: but thoſe who hold by Frankalmoign, or by Divine ſervice, ſhall not pay Ayd, as before is ſaid.

See ibid. 20 E. 3. Rot. 13, and 14. de auxiliando ad primogenitum filium Regis militem faciend. and Collectors thereupon appointed. By all which before cited, it appeareth, that Tenure in Burgage is ſubject to the payment of Ayd. And note, that a great part of London was Abby or Chauntry Land, and the Lands of perſons attainted: and all thoſe which are immediately holden of the King by Knights ſervice, or in Socage, ſhall be contributary to the payment of Ayd, &c.

XI. Hill. 6 Jacobi Regis. Prohibitions.

12 Co. 50.

UPon Wedneſday, being Aſhwedneſday, the day of February, 1606. A great Complaint was made by the Preſident of York unto the King, That the Judges of the Common Law had, in contempt of the Command of the King the laſt Term, granted ſixty or fifty Prohibitions at the leaſt out of the Common-Pleas to the Preſident and Councel of York after the ſixth day of February, and named three in particular, (ſcil.) between Bell and Thawptes, another between Snell and Huet, and another in an Information of a Riotous Reſcue preferred by Engliſh Will by the Attorny General againſt Chriſtopher Dickenſon, one of the Sheriffs of York, and divers others, in reſcuing of one William Watſon out of the Cuſtody of the Deputy of one of the Purſuivants of the ſame Councel who had arreſted the ſaid Watſon by force of a Commiſſion of Rebellion awarded by the Preſident and Councel, which Prohibition in the ſaid Information was (as was affirmed) denyed upon a motion made in the Kings Bench the laſt Term, and yet granted by us. And the King ſent for me to anſwer to that Complaint: and I onely, all the reſt of the Juſtices being abſent, waited upon the King in the Chamber neer the Gallery; Who, in the preſence of Egerton Lord Chancellor, the Earl of Salisbury Lord Treaſurer, the Lord of Northampton Lord Privy Seal, the Earl of Suffolk Lord Chamberlain, the Earl of Worceſter, the Archbiſhop of Canterbury, the Lord Wotton, and others of his Councel, rehearſed to me the Complaint aforeſaid: and I perceived well, that upon the

12 Co. 49.

ſaid

ſaid Information he had conceived great diſpleaſure againſt the Judges of the Common Pleas, and chiefly againſt me; To which I (having the Copy of the Complaint ſent to me by the Lord Treaſurer the Sabbath day before) anſwered in this manner, That I had, with as much brevity as the time would permit, made ſearch in the Offices of the Preignothories of the Common Pleas: and as to the ſaid Caſes between Bell and Thawptes, and Snell and Huet, no ſuch could be found: but my intent was not to take advantage of a Miſpriſal: and the truth was, that the ſixth day of February the Court of Common Pleas had granted a Prohibition to the Preſident and Councel of York, between Lock Plaintiff, and Bell and others Defendants: and that was, a Replevyn in Engliſh was granted by the ſaid Preſident and Councel, which I affirmed was utterly againſt Law: For at the Common Law no Replevyn ought to be made, but by Original Writ directed to the Sheriff. And the Statute of Marlbridg cap. 21. and Weſt. 1. cap. 17. hath authorized the Sheriff upon Plaint made to him, to make a Replevyn; and all that appeareth by the ſaid Statutes, and by the Books of 29 E. 3. 21: 8 Eliz. Dyer 245. And the King neither by his Inſtructions had made the Preſident and Councel Sheriffs, nor could grant to them power to make a Replevyn againſt the Law, nor againſt the ſaid Acts of Parliament; but the ſame ought to be made by the Sheriff. And all that was affirmed by the Lord Chancellor for very good Law: And I ſay, that it might well be that we have granted other Prohibitions in other Caſes of Engliſh Replevyns. Another Prohibition I confeſs we have granted between Sir Bethel Knight, now Sheriff of the County of York, as Executor to one Stephenſon, who had made him and another his Executors, and preferred an Engliſh Bill againſt Chambers, and divers others in the nature of an Action upon the Caſe, upon a Trover and Converſion in the life of the Teſtator of goods and Chattels, to the value of 1000l. and becauſe the other Executor would not joyn with him, although he was named in the Bill, he had not any remedy at the Common Law, he prayed remedy there in Equity: and I ſay, that the Preſident and Councel have not any authority to proceed in that Caſe, for divers cauſes. ſ. Bul. 110. ac.

1. Becauſe there is an expreſs limitation in their Commiſſion, that they ſhall not hold plea between party and party &c. unleſs both parties, or one of them, tanta paupertate ſunt gravati, that they cannot ſue at the Common Law: and in that caſe the Plaintiff was a Knight, and Sheriff, and a man of great ability.

2. By that Suit the King was deceived of his Fine, for he ought to have had 200l. Fine, becauſe that the damages amounted to 4000 l. and that was one of the cauſes that the Sheriff began his Suit there, and not at the Common Law: another cauſe was, that their Decrees which they take upon them are final and uncontroulable, either by Error, or any other remedy. And yet the Preſident is a Noble-man, but not learned in the Law; and thoſe which are of the Councel there, although that they have the countenance of Law, yet they are not learned in the Law; and nevertheleſs they take upon them final and uncontroulable Decrees in matters of great importance: For if they may deny Relief to any at their pleaſure without controulment, ſo they may do it by their final Decrees without Error, Appeal, or other remedy: which is not ſo in the Kings Courts where there are five Judges; for they can deny Juſtice to none who hath Right, nor give any Judgment, but the ſame is controulable by a Writ of Error, &c.

And

And if we ſhall not grant Prohibitions in Caſes where they hold Plea without authority, then the ſubjects ſhall be wrongfully oppreſſed without Law, and we denyed to do them Juſtice: And their ignorance in the Law appeared by their allowance of that Suit, ſcil. That the one Executor had no remedy by the Common Law, becauſe the other would not joyn in ſuit with him at the Common Law: whereas every one learned in the Law knoweth, that ſummons and ſeverance lieth in any Suit brought as Executors: and this alſo in that particular Caſe was affirmed by the Lord Chancellor; and he much inveighed againſt Actions brought there upon Trover and Converſion, and ſaid, that they could not be found in our ancient Books.

Another Prohibition I confeſs we have granted, between the L. Wharton, who by Engliſh Bill ſued before the Counſel, Banks, Buttermere, and others, for fiſhing in his ſeveral Fiſhings in Darwent in the County of C. in the nature of an Action of Treſpaſs at the Common Law, to his damages of 200 l. and for the cauſes next before recited, and becauſe the ſame was meerly determinable at the Common Law, we granted a Prohibition, and that alſo was allowed by the Lord Chancellor. And as to the caſe of Information upon the Riotous Reſcous, I having forgotten to ſpeak to that, the King himſelf asked what the Caſe was? to whom I anſwered, that the caſe was, That one exhibited a Bill there in the nature of an Action of Debt, upon a Mutuatus againſt Watſon, who upon his Oath affirmed, that he had ſatisfied the Plaintiff, and that he owed him nothing, and yet becauſe the Defendant did not deny the Debt, the Counſel decreed the ſame againſt him, and upon that Decree the Purſuivant was ſent to arreſt the ſaid Watſon, who arreſted him upon which the Reſcous was made: and becauſe that the Suit was in the nature of an Action of Debt upon a Mutuatus at the Common Law, and the Defendant at the Common Law might have waged his Law, of which the Defendant ought not to be barred by that Engliſh Bill, quia beneficium juris nemini eſt auferendum: the Prohibition was granted; and that was affirmed alſo by the Lord Chancellor: whereupon I concluded, that if the principal cauſe doth not belong unto them, all their proceedings was coram non Judice, and then no Reſcous could be done: but the Lord Chancellor ſaid, that though the ſame cannot be a Reſcous, yet it was a Riot, which might be puniſhed there: which I denyed, unleſs it were by courſe of Law by force of a Commiſſion of Oyer and Terminer, and not by an Engliſh Bill: but to give the King full ſatisfaction in that point, the truth is, the ſaid Caſe was debated in Court, and the Court inclined to grant a Prohibition in the ſaid caſe; but the ſame was ſtayed to be better adviſed upon, ſo as no Prohibition was ever under Seal in the ſaid Caſe.

Alſo I confeſs, that we have granted divers Prohibitions to ſtay Suits there by Engliſh Bill upon penal Statutes: for the manner of proſecution, as well for the Action, Proces, &c. as for the count, is to be purſued, and cannot be altered; and therefore without queſtion the Counſel in ſuch caſes cannot hold Plea, which was alſo affirmed by the Lord Chancellor. And I ſaid, that it was reſolved in the Reign of Queen Eliz. in Parots Caſe, and now lately in the Caſe of the Preſident and Counſel of Wales, That no Court of Equity can be erected at this day without Act of Parliament, for the reaſons and cauſes in the Report of the ſaid Caſe of Parrot.

And the King was well ſatisfied with theſe reaſons and cauſes of our

our proceedings, who of his Grace gave me his Royall hand, and I departed from thence in his favour. And the ſurmiſe of the Number, and that the Prohibition in the ſaid Caſe in the Information was denied in the Kings Bench, was utterly denied: for the ſame was moved when two Judges were in Court, who gave not any opinion therein, but required Serjeant Hutton who moved it, to move the ſame again when the Court was full, &c.

XII. Paſch. 7 Jacobi Regis.

NOte, that this Term a Queſtion was moved at Serjeants-Inne: Who by the Common Law ought to repair the Bridges, common Rivers, and Sewers, and the High-waies, and by what means they ſhall be compelled to it; and firſt of the Bridges: And as to them it is to be known, That of common Right all the Country ſhall be charged to the Reparation of a Bridge, and therewith agreeth 10 E. 3. 28. b. That a Bridge ſhall be levied by the whole Country, becauſe it is a common Eaſement for the whole Country, and as to that Point, the Statute of 22 H. 8. cap. 5. was but an affirmance of the Common Law: And this is true, when no other is bound by the Law to repair it, but he who hath the Toll of the men or Cattell which paſſe over a Bridge or Cawſey, ought to repaire the ſame, for he hath the Toll to that purpoſe, Et qui ſentit commodum ſentire debet & onus: and therewith agrees 14 E. 3. Bar 276. Alſo a man may be bounden to repaire a Bridge, ratione Tenuræ of certain Land, But a particular perſon cannot be bound by preſcription, ſcil. That he and all his Anceſtors have repaired the Bridge, if it be not in reſpect of the Tenure of his Land, taking of Toll, or other profit; for the Act of the Anceſtor, cannot charge the Heir without profit. But an Abbot or other Corporation who hath a lawfull being may be charged, ſcil. That he and his Predeceſſors time out of mind, &c. have repaired the Bridge; For the Abbot and Covent may bind their Succeſſors, vide 21 E. 4. 28. 27 E. 3. 8. 22 Aſſ. 8. 5 H. 7. 3. And if an Abbot and his Predeceſſors time out of mind have repaired a Bridge of Almes, they ſhall be compelled to repaire it; and therewith agreeth 10 E. 3. 28. So it is of a High-way of common Right, all the Country ought for to repaire it, becauſe that the Country have their eaſe and paſſage by it, which ſtands with the reaſon of the Caſe of the Bridge, but yet ſome may be particularly bounden to repaire it as is aforeſaid. He who hath the Land adjoyning, ought of common Right without preſcription to ſcoure and cleanſe the Ditches, next to the way to his Land: and therewith agreeth the Book of 8 H. 7. 5 But he who hath Land adjoyning without preſcription, is not bound to repair the way. So of a common River, of common Right all who have eaſe and paſſage by it, ought to cleanſe and ſcoure it; For a common River is as a common Street, as it is ſaid in 22 Aſſ. and 37 Aſſ. 10. But he who hath Land adjoyning to the River is not bounden to cleanſe the River, unleſſe he hath the benefit of it, ſcil. a Toll, or a Fiſhing, or other profit. See 37 Aſſ. p. 10.

Ve. 368.

Sh. 364.

XIII. Paſch. 7 Jacobi.

Sir William Reades and Boothes Caſe.

Fozgery

IN the great Caſe in the Star-Chamber, of a Fozgery, Between Sir William Read Plaintiff, and Roger Booth, and Cutbert Booth, and others Defendants: the Caſe was this;

The ſaid Roger Booth 38 Eliz. was convicted in that Court of the publication of a Writing under Seal, fozged in the name of Sir Thomas Greſham, of a Rent-charge of a hundzed pounds, out of all his Lands and Tenements, to one Markham foz ninety nine years, bearing date the one and twentieth year of Queen Elizabeth; the ſaid Roger knowing it to be fozged, And afterwards the ſaid Sir William Read exhibited the ſaid Bill againſt the ſaid Boothes, and others, foz fozging of another writing under Seal bearing date the twentieth of Eliz. in the name of the ſaid Sir Thomas Greſham, purpozting a Deed of Feoffment of all his Lands (except certain) to Sir Rowland Heyward and Edward Hoogon and their Heirs, to certain uſes, which was in effect to the uſe of Markham the younger and his Heirs: And foz the publication of the ſaid Writing, knowing the ſame to be fozged, was the Bill exhibited. And now upon the hearing of the Cauſe in the Star-Chamber this Term: Theſe doubts were moved upon the Statute of 5 Eliz.. 1. If one who is convicted of publication of a Deed of Feoffment oz Rent-charge, knowing the ſame to be fozged: Again at another day fozge another Deed of Feoffment, oz Rent-charge, if he be within the caſe of Felony within the ſaid Act, which doubt ariſeth upon theſe wozds (eftſoons) committed again any of the ſaid Offences) And therefoze it was objected, that he ought to commit again the ſame nature of Offence, ſcil. If he were convicted of Fozgery he ought to fozge again, and not only publiſh, knowing, &c. And if firſt he were convicted of publiſhing, knowing, &c. he ought to offend again in publication, knowing, &c. and not in Fozgery, foz (eftſoons) which is (iterum) implyeth that it ought to be of the ſame nature of Offence. The ſecond doubt was, If a man committeth two Fozgeries, the one in 37 of Eliz. and the other in 38. and he is firſt convicted of the laſt, if he may be now impeached foz the firſt. The third doubt was, when Roger Booth was convicted in 38 Eliz. and afterwards is charged with a new Fozgery in 37 Eliz. If the Witneſſes proving in truth that it was fozged after the firſt conviction, if the Star-Chamber hath Juriſdiction of it. The laſt doubt was, when Cutbert Booth who never was convicted of Fozgery befoze, if in truth the Fozgery was done, and ſo proved in 38 Eliz. If he might be convicted upon this Bill, becauſe that the Fozgery is alledged befoze that it was done. As to the firſt and ſecond doubts, it was reſolved by the two chief Juſtices and the chief Baron, that if any one be convicted of Fozgery oz publication of any Writing concerning Freehold, &c. within the firſt Branch; oz concerning Intereſt oz Term foz years, &c. within the ſecond Branch, and be convicted, if afterwards he offend either againſt the firſt Branch oz ſecond, that the ſame is Felony: As if he fozgeth a Writing concerning intereſt foz years within the ſecond branch, and be convicted, and afterwards he fozgeth a Charter of Feoffment within the firſt branch, oz è converſo, that

that that is Felony, and that by expresse words of the Act: That if any person or persons being hereafter convicted or condemned of any of the said Offences, which words (any of the said Offences, extend to all the Offences mentioned before, either in the first branch, or in the second branch) by any the waies or means above limited, shall after any such conviction or condemnation, eftsoons commit or perpetrate any of the said Offences, in form aforesaid, which words, Any of the said Offences, &c. do extend to the nature of all the Offences mentioned in the first and second Branches: But if one forge a Writing in 37. of Eliz. and afterwards he forge another in 38. of Eliz. yet it is not Felony, although that he forgeth many Writings one after the other, for by the expresse words of the Act, it is not Felony. The Forgery, &c. which is Felony by the Act, ought to be after conviction or condemnation of a former Writing. As to the third doubt, it was resolved, That the allegation of the time by the Plaintiff in the Bill, shall not alter the Offence, but shall give unto the Court Jurisdiction: but if it appeareth to the Court, that the Forgery or Publication was after the Sentence, then the Court shall surcease. As to the last Point, it was resolved, that the time of the Forgery is not materiall, be it before or after the Offence in truth committed, if it be committed before the exhibiting of the Bill, but if the date of the Writing supposed to be forged, had been mistaken, there the Defendant could not be condemned of a Deed of another date, for that is not the Offence complained of in the Bill, of which the Court can give Sentence.

XIV. Pasch. 7. Jacobi Regis.

The Case of Sewers.

THe Case was, That there was a Cawsey, or Pilstanke of Stone in the River of Dee and City of Chester, which Cawsey before the Raign of King Edward the first, was erected for the necessary maintenance of certain Mills, some of the Kings, and others of the Subjects at the end of the said Cawsey: and now a certain Decree was made by certain Commissioners of Sewers, for a breach to be made by ten Poles in length in the said Cawsey, which Cawsey as it was admitted by both parties was erected before the Raign of King Edward the first, and so hath continued untill this day without any exaltation or inhancing: and if by any Decree of the Commissioners by force of any Statute, any breach may be made in that Cawsey, was the Question. And it was referred by the Letters of the Lord of the Privy Councell, to the two cheif Justices, and the chief Baron; and upon hearing of Councell learned at divers daies, and good consideration had in the time of the last Vacation, of all the Statutes concerning Sewers, and upon conference had amongst themselves, it was resolved as followeth.

1. Whereas it is provided by the Statute of Magna Charta, cap. 23. Quod omnes Kidelli deponantur de cetero per Thamesiam, & Medeweiam & per totam Angl. nisi per Costeram Maris. It was resolved, That that Stat. extended only to Kidells, sc. open Wares for taking of Fish; but the first Statute which extended to pulling down, or abating of any Mills, Mill-stankes, and Cawseys, was the Statute of 25 E. 3. cap. 4. which Act appointed such only to be thrown down or abated, which were levied or erected in the Raign of King Edward the first, or after:

But by the Statute made, An. 1 H. 4. cap. 12. upon complaint in Parliament of the great damages which have riſen by the outrageous inhanſing of Mills, Mill-ſtanks, and other impediments made and erected before the Raign of King Edward the firſt: The ſaid old Mills and Mill-ſtanks were appointed by Act then made to be ſurveyed, and ſuch as were found to be much inhanſed to be corrected and amended; ſaving alwaies reaſonable ſubſtance of ſuch Mills, Mill-ſtanks Weares, &c. as in old time made and levied: None of which Acts extended to the Caſe in queſtion; For that Cawſey was erected before the Raign of Edward the firſt, and never exalted or inhanſed after the erection of it: And the ſtatute of 12 H. 4. cap. 7. doth confirm all the ſaid Acts; and by them the generality of the Act of Magna Charta is reſtrained, as by the ſaid Acts appeareth. And by the ſtatute of 23 H. 8. cap. 5. None of the ſaid Acts as to the Caſe in queſtion is repealed; for firſt, the ſame Act appoints the manner, form, tenor, and effect of the Commiſſion of Sewers, by which power is given to the Commiſſioners to ſurvey, Walls, &c. Fences, Cawſeys, &c. Mills, &c. and then to correct, repair, amend, pull down or over-throw, or reform, as cauſe requireth, according to their wiſdomes and diſcretions; and therein as well to obtain and do after the form, tenor, and effect of all and ſingular the Statutes and Ordinances made before the firſt of March, in the twenty third year of Henry the eighth, as alſo to enquire by the Oathes of honeſt and lawfull men &c. through whoſe default the ſaid hurts and damages have happened, &c. By which it appeareth, That the diſcretion of the Commiſſioners was limited, ſcill. to proceed according to the ſtatutes and Ordinances before made, &c. And alſo to reform, repair, and amend the ſaid Walls, &c. by force of that word (ſaid) hath relation to the precedent purview of the Act, &c. And further to reform, preſtrate and over-throw all ſuch Mills, &c. and other impediments and annoyances (aforeſaid) as ſhall be found by Inquiſition, or by your ſurvey and diſcretion to be exceſſive, i. e. hurtfull; which word (aforeſaid) refers that clauſe alſo to the precedent purview, ſcil. ſuch impediments and annoyances as are againſt the Statutes and Ordinances before made. Alſo it is further provided by the ſame Act, That all and every Statute, Act, and Ordinance heretofore made concerning the Premiſſes or any of them, not being contrary to this preſent Act, nor heretofore repealed, ſhall from henceforth ſtand and be good and effectuall for ever. But the ſaid Acts of 25 E. 3. and 1 H. 4. are not contrary to any clauſe of that Act, nor were repealed before: And alwaies ſuch conſtruction ought to be made, that one part of the Act may agree with another, and all to ſtand together: and if they had intended a repeal of the ſaid former Acts, they would not have repealed them by ſuch generall and doubtfull words, when they concerned the Inheritances of many Subjects: and according to this reſolution we certified the Lords of the Councell, that the ſaid Statutes of 25 E. 3. and 1. of H. 4. remained yet in force; and that the Authority given by the Commiſſion of Sewers, did not extend to Mills, Mill-ſtanks, Cawſeys, &c. erected before the Raign of King Ed. 1. unleſſe that they have been inhaunſed and exalted above their former height, and thereby made more prejudiciall, &c. In which caſe they are not to be overthrown or ſubverted, but to be reformed by abating the exceſſe and inhaunſment only.

Trin.

Trinit. 7 Jacobi Regis.

XIV. The Caſe De Modo Decimandi, and of Prohibitions, debated before the Kings Majeſty.

RIchard, Archbiſhop of Canterbury, accompanyed with the Biſhop of London, the Biſhop of Bathe and Wells, the Biſhop of Rocheſter, and divers Doctors of the Civil and Canon Law, as Dr. Dung Judg of the Arches, Dr. Bennet Judg of the Prerogative, Dr. James, Dr. Martin, and divers other Doctors of the Civil and Canon Law came attending upon them to the King to Whitehall the Thurſday, Friday, and Saturday after Eaſter-Term, in the Councel-Chamber; where the Cheif Juſtice, and I my ſelf, Daniel Judg of the Common-Pleas, and Williams Judg of the Kings-Bench, by the command of the King attended alſo: where the King being aſſiſted with his Privy Councel, all ſitting at the Councel Table, ſpake as a moſt gracious, good, and excellent Soveraign, to this effect: As I would not ſuffer any novelty or Innovations in my Courts of Juſtice Eccleſiaſtical and Temporal; ſo I will not have any of the Laws, which have had judicial allowances in the times of the Kings of England before him, to be forgotten, but to be put in execution. And for as much as upon the contentions between the Eccleſiaſtical and Temporal Courts great trouble, inconvenience and loſs may ariſe to the ſubjects of both parts, namely when the controverſie ariſeth upon the juriſdiction of my Courts of ordinary Juſtice; and becauſe I am the head of Juſtice immediately under God, and knowing what hurt may grow to my Subjects of both ſides, when no private caſe, but when the Juriſdictions of my Courts are drawn in queſtion, which in effect concerneth all my Subjects, I thought that it ſtood with the Office of a King, which God hath committed to me, to hear the controverſies between the Biſhops and other of his Clergy, and the Judges of the Laws of England, and to take Order, that for the good and quiet of his Subjects, that the one do not encroach upon the other, but that every of them hold themſelves within their natural and local juriſdiction, without encroachment or uſurpation the one upon the other. And he ſaid, that the onely queſtion then to be diſputed was, If a Parſon, or a Vicar of a Pariſh, ſueth one of his Pariſh in the Spiritual Court for Tythes in kinde, or Lay-fee, and the Defendant allegeth a cuſtom or preſcription De modo Decimandi, if that cuſtom or preſcription, De modo Decimandi, ſhall be tryed and determined before the Judg Eccleſiaſtical where the Suit is begun; or a Prohibition lyeth, to try the ſame by the common Law. And the King directed, that we who were Judges ſhould declare the reaſons and cauſes of our proceedings, and that he would hear the authorities in the Law which we had to warrant our proceedings in granting of Prohibition in caſes of Modo Decimandi. But the Archbiſhop of Canterbury kneeled before the King, and deſired him, that he would hear him and others who are provided to ſpeak in the caſe for the good of the Church of England: and the Archbiſhop himſelf inveighed much againſt two things: 1. That a Modus Decimandi ſhould be tryed

tryed by a Jury, because that they themselves claim more or less modum Decimandi; so as in effect they were Tryers in their own cause, or in the like cases. 2. He inveighed much the precipitate and hasty Tryals by Juries: and after him Doctor Bennet, Judg of the Prerogative Court, made a large Invection against Prohibitions in Causis Ecclesiasticis: and that both Jurisdictions as well Ecclesiastical as Temporal were derived from the King; and all that which he spake out of the Book which Dr. Ridley hath lately published, I omit as impertinent: and he made five Reasons, why they should try Modum Decimandi.

And the first and principal Reason was out of the Register, fo. 58. quia non est consonans rationi, quod cognitio accessarii in Curia Christianitatis impediatur ubi cognitio Causæ principalis ad forum Ecclesiasticum noscitur pertinere. And the principal cause is Right of Tythes, and the Plea of Modo Decimandi sounds in satisfaction of Tythes; and therefore the Conusance of the original cause, (scil.) the Right of Tythes appertaining to them, the Conusance of the bar of Tythes, which he said was but the accessary, and as it were dependant upon it, appertained also to them. And whereas it is said in the Bishop of VVinchesters Case, in the second part of my Reports, and 8 E. 4. 14. that they would not accept of any Plea in discharge of Tythes in the Spiritual Court, he said, that they would allow such Pleas in the Spiritual Court, and commonly had allowed them; and therefore he said, that that was the Mystery of iniquity founded upon a false and feigned foundation, and humbly desired the reformation of that Error, for they would allow Modum Decimandi being duly proved before them.

2. There was great inconvenience, that Lay-men should be Tryers of their own Customs, if a Modus Decimandi should be tryed by Jurors; for they shall be upon the matter Jurors in their own cause.

3. That the custom of Modo Decimandi is of Ecclesiastical Jurisdiction and Conusance, for it is a manner of Tything, and all manner of Tything belongs to Ecclesiastical Jurisdiction: and therefore he said, that the Judges, in their Answer to certain Objections made by the Archbishop of Canterbury, have confessed, that suit may be had in Spiritual Courts pro modo Decimandi; and therefore the same is of Ecclesiastical Conusance; and by consequence it shall be tryed before the Ecclesiastical Judges: for if the Right of Tythes be of Ecclesiastical Conusance, and the satisfaction also for them of the same Jurisdiction, the same shall be tryed in the Ecclesiastical Court.

4. In the Prohibitions of Modus Decimandi averment is taken, That although the Plaintiff in the Prohibition offereth to prove Modum Decimandi, the Ecclesiastical Court doth refuse to allow of it, which was confessed to be a good cause of Prohibition: But he said, they would allow the Plea De Modo Decimandi in the Spiritual Court, and therefore cessante causa cessabit & effectus, and no Prohibition shall lie in the Case.

5. He said, that he can shew many consultations granted in the cause De Modo Decimandi, and a Consultation is of greater force then a Prohibition; for Consultation, as the word imports, is made with the Court with consultation and deliberation. And Bacon, Solicitor-General, being (as it is said) assigned with the Clergy by the King, argued before the King, and in effect said less then Doctor Bennet said before: but he vouched 1 R. 3. 4. the Opinion of Hussey, when the Original ought to begin in the Spiritual Court, and afterwards a

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2. 269. 1 Bulst. 65.

thing cometh in iſſue which is tryable in our Law, yet it ſhall be tryed by their Law: As if a man ſueth for a Horſe deviſed to him, and the Defendant ſaith, that the Deviſor gave to him the ſaid Horſe, the ſame ſhall be tryed there. And the Regiſter 57 and 58. If a man be condemned in Expences in the Spiritual Court for laying violent hands upon a Clark, and afterwards the Defendant pays the coſts, and gets an Acquittance, and yet the Plaintiff ſueth him againſt his Acquittance for the Coſts, and he obtains a Prohibition, for that Acquittances and Deeds are to be determined in our Law, he ſhall have a Conſultation, becauſe that the principal belongeth to them. 38 E. 3. 5. Right of Tythes between two ſpiritual perſons ſhall be determined in the Eccleſiaſtical Court. And 38 E. 3. 6. where the Right of Tythes comes in debate between two ſpiritual perſons, the one claiming the Tythes as of common Right within his Parish, and the other claiming to be diſcharged by real compoſition, the Eccleſiaſtical Court ſhall have Juriſdiction of it.

And the ſaid Judges made humble ſuit to the King, That for as much as they perceived that the King in his Princely Wiſdom did deteſt Innovations and Novelties, that he would vouchſafe to ſuffer them with his gracious favor, to inform him of one Innovation and Novelty which they conceived would tend to the hinderance of the good adminiſtration and execution of Juſtice within his Realm.

Your Majeſty, for the great zeal which you have to Juſtice, and for the due adminiſtration thereof, hath conſtituted and made fourteen Judges, to whom you have committed not onely the adminiſtration of Ordinary Juſtice of the Realm, but crimina læſæ Majeſtatis, touching your Royal perſon, for the legal proceeding: alſo in Parliament we are called by Writ, to give to your Majeſty and to the Lords of the Parliament our advice and counſel, when we are required: We two chief Juſtices ſit in the Star-Chamber, and are oftentimes called into the Chancery, Court of Wards, and other High Courts of Juſtice: we in our Circuits do viſit twice in the year your Realm, and execute Juſtice according to your Laws: and if we who are your publique Judges receive any diminution of ſuch reverence and reſpect in our places, which our predeceſſors had, we ſhall not be able to do you ſuch acceptable ſervice as they did, without having ſuch reverence and reſpect as Judges ought to have. The ſtate of this Queſtion is not in ſtatu deliberativo, but in ſtatu judiciali; it is not diſputed de bono, but de vero, non de Lege fienda, ſed de Lege lata; not to frame or deviſe new Laws, but to inform your Majeſty what your Law of England is: and therefore it was never ſeen before, that when the Queſtion is of the Law, that your Judges of the Law have been made Diſputants with him who is inferior to them, who day by day plead before them at their ſeveral Courts at Weſtminſter: and although we are not afraid to diſpute with Mr. Bennet and Mr. Bacon, yet this example being primæ impreſſionis, and your Majeſty deteſting Novelties and innovations, we leave it to your Grace and Princely conſideration, whether your Majeſty will permit our anſwering in hoc ſtatu judiciali, upon your publique Judges of the Realm? But in Obedience to your Majeſties command, We, with your Majeſties gracious favor, in moſt humble manner will inform your Majeſty touching the ſaid Queſtion, which we, and our predeceſſors before us, have oftentimes adjudged upon judicial proceedings in your Courts of Juſtice at Weſtminſter: which Judgments cannot be reverſed or examined for any Error in Law, if

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not by a Writ of Error in a more high and ſupream Court of Juſtice, upon legal and judicial proceedings: and that is the ancient Law of England, as appeareth by the Statute of 4 H. 4. cap. 22.

And we being commanded to proceed, all that which was ſaid by us, the Judges, was to this effect, That the Tryal De Modo Decimandi ought to be by the Common Law by a Jury of twelve men, it appeareth in three manners: Firſt, by the Common Law: Secondly, by Acts of Parliament: And laſtly, by infinite judgments and judicial proceedings long times paſt without any impeachment or interruption.

But firſt it is to ſee, What is a Modus Decimandi? Modus Decimandi is, when Lands, Tenements, or Hereditaments have been given to the Parſon and his ſucceſſors, or an annual certain ſum, or other profit, always, time out of minde, to the Parſon and his ſucceſſors, in full ſatisfaction and diſcharge of all the Tythes in kinde in ſuch a place: and ſuch manner of Tything is now confeſſed by the other party to be a good bar of Tythes in kinde.

I. That Modus Decimandi ſhall be tryed by the Common Law, that is, that all ſatisfactions given in diſcharge of Tythes ſhall be tryed by the Common Law: and therefore put that which is the moſt common caſe, That the Lord of the Manor of Dale preſcribes to give to the Parſon 40 s. yearly, in full ſatisfaction and diſcharge of all Tythes growing and renewing within the Manor of Dale, at the Feaſt of Eaſter: The Parſon ſueth the Lord of the Manor of Dale for his Tythes of his Manor in kinde, and he in Bar preſcribes in manner ut ſupra: The Queſtion is, if the Lord of the Manor of Dale may upon that have a Prohibition, for if the Prohibition lyeth, then the Spiritual Court ought not to try it; for the end of the Prohibition is, That they do not try that which belongs to the Tryal of the Common Law; the words of the Prohibition being, that they would draw the ſame ad aliud examen.

Firſt, the Law of England is divided into Common-Law, Statute-Law, and Cuſtoms of England: and therefore the Cuſtoms of England are to be tryed by the Tryal which the Law of England doth appoint.

Secondly, Preſcriptions by the Law of the Holy Church, and by the Common Law, differ in the times of limitation; and therefore Preſcriptions and Cuſtoms of England ſhall be tryed by the Common Law. See 20 H. 6. fo. 17. 19 E. 3. Juriſdiction 28. The Biſhop of Wincheſter brought a Writ of Annuity againſt the Archdeacon of Surry, and declared, how that he and his ſucceſſors were ſeiſed by the hands of the Defendant by title of Preſcription, and the Defendant demanded Judgment, if the Court would hold Juriſdiction being between ſpiritual perſons, &c. Stone Juſtice, Be aſſured, that upon title of preſcription we will here hold Juriſdiction; and upon that, Wilby chief Juſtice gave the Rule, Anſwer: Upon which it follows, that if a Modus Decimandi, which is an annual ſum for Tythes by preſcription, comes in debate between ſpiritual perſons, that the ſame ſhall be tryed here: For the Rule of the Book is general, (ſcil.) upon title of preſcription, we will hold Juriſdiction, and that is fortified with an Aſſeveration, Know aſſuredly; as if he ſhould ſay, that it is ſo certain, that it is without queſtion. 32 E. 3. Juriſd. 26. There was a Vicar who had only Tythes and Oblations, and an Abbot claimed an Annuity or Penſion of him by preſcription: and it was adjudged, that the ſame preſcrip-

preſcription, although it was betwixt ſpiritual perſons, ſhould be tryed by the Common Law: Vide 22 H. 6. 46. and 47. A preſcription, that an Abby time out of minde had found a Chaplain in his Chappel to ſay Divine Service, and to miniſter Sacraments, tryed at the Common Law.

3. See the Record of 25 H. 3. cited in the caſe of Modus Decimandi before: and ſee Regiſter fo. 38. when Lands are given in ſatisfaction and diſcharge of Tythes.

4. See the Statute of Circumſpecte agatis, Decimæ debitæ, ſeu conſuetæ, which proves that Tythes in kinde, and a Modus by cuſtom, &c.

5. 8 E. 4. 14. and Fitz. N. B. 41. g. A Prohibition lieth for Lands given in diſcharge of Tythes. 28 E. 3. 97. 2. There Suit was for Tythes, and a Prohibition lieth, and ſo abridged by the Book, which of neceſſity ought to be upon matter De Modo Decimandi, or diſcharge: 615 - J 48. 6.

7. 7 E. 6. 79. If Tythes are ſold for mony, by the ſale, the things ſpiritual are made temporal, and ſo in the caſe De modo Decimandi, 42 E. 3. 12. agrees.

8. 22 E. 3. 2. Becauſe an Appropriation is mixt with the Temporalty, (ſcil.) the Kings Letters Patents, the ſame ought to be ſhewed how, &c. otherwiſe of that which is meer Temporal: and ſo it is of real compoſition, in which the Patron ought to joyn: Vide 11 H. 4. 85. Compoſition by writing, that the one ſhall have the Tythes, and the other ſhall have mony, the Suit ſhall be at the Common Law.

Secondly, By Acts of Parliament.

1. The ſaid Act of Circumſpecte agatis, which giveth power to the Eccleſiaſtical Judg to ſue for Tythes due firſt in kinde, or by cuſtom, i. e. Modus Decimandi: ſo as by authority of that Act, although that the yearly ſum ſoundeth in the Temporalty, which was payd by Cuſtom in diſcharge of Tythes, yet becauſe the ſame cometh in the place of Tythes, and by conſtitution, the Tythes are changed into mony, and the Parſon hath not any remedy for the ſame, which is the Modus Decimandi at the Common Law; for that cauſe the Act is clear, that the ſame was a doubt at the Common Law: And the Statute of Articuli Cleri, cap. 1. If corporal pennance be changed in pœnam pecuniariam, for that pain Suit lieth in the Spiritual Court: For ſee Mich. 8 H. 3. Rot. 6. in Theſaur. A Prohibition lieth pro eo quod Rector de Cheſterton exigit de Hagone de Logis de certa portione pro Decimis Molendinarium; ſo as it appeareth, it was a doubt before the ſaid Statute, if Suit lay in the Spiritual Court de Modo Decimandi. And by the Statute of 27 H. 8. cap. 20. it is provided and enacted, That every of the ſubjects of this Realm, according to the Eccleſiaſtical Laws of the Church, and after the laudable uſages and cuſtoms of the Pariſh, &c. ſhall yield and pay his Tythes, Offerings, and other duties: and that for ſubſtraction of any of the ſaid Tythes, offerings, or other duties, the Parſon, &c. may by due Proces of the Kings Eccleſiaſtical Laws, convent the perſon offending before a competent Judg, having authority to hear and determine the Right of Tythes, and alſo to compel him to yeild the Duties; i. e. as well Modus Decimandi, by laudable uſage or Cuſtom of the Pariſh, as Tythes in kinde: and with that in effect agrees the Statute of 32 H. 8. cap 7. By the Statute of 2 E. 3. cap. 13. it is enacted, That every of the Kings Subjects ſhall from henceforth, truly and juſtly, without fraud or guile, divide, &c. and pay all manner of their predial Tythes in their proper kinde, as they riſe

and happen in such manner and form as they have been of Right yielded and payd within forty years next before the making of this Act, or of Right or Custom ought to have been payd. And after in the same Act there is this clause and Proviso, Provided always, and be it enacted, That no person shall be sued, or otherwise compelled to yield, give, or pay any manner of Tythes for any Mannors, Lands, Tenements, or Hereditaments, which by the Laws and Statutes of this Realm, or by any privilege or prescription, are not chargeable with the payment of any such Tythes, or that be discharged by any compositions real. And afterwards, there is another Branch in the said Act; And be it further enacted, That if any person do subtract or withdraw any manner of Tythes, Obventions, Profits, Commodities, or other Duties before mentioned (which extends to Custom of Tything, i. e. Modus Decimandi, mentioned before in the Act, &c.) that then the party so subtracting, &c. may be convented and sued in the Kings Ecclesiastical Court, &c. And upon the said Branch, which is in the Negative, That no person shall be sued for any Tythes of any Lands which are not chargeable with the payment of such Tythes by any Law, Statute, Privilege, Prescription, or Real Composition. And always when an Act of Parliament commands or prohibits any Court, be it Temporal or Spiritual, to do any thing temporal or spiritual, if the Statute be not obeyed, a Prohibition lieth: as upon the Statute de articulis super Cartas, ca. 4. Quod Communia Placita non tenentur in Scaccario: a Prohibition lieth to the Court of Exchequer, if the Barons hold a Common-Plea there, as appeareth in the Register 187. b. So upon the Statute of West. 2. Quod inquisitiones quæ magnæ sunt examinationis non capiantur in patria; a Prohibition lieth to the Justices of Nisi Prius. So upon the Statute of Articuli super Cartas, cap. 7. Quod Constabularius Castr. Dover, non teneat Placitum forinsecum quod non tangit Custodiam Castri, Register 185. So upon the same Statute, cap. 3. Quod Senescallus & Marischallus non teneant Placita de libero tenemento, de debito, conventione, &c. a Prohibition lieth, 185. And yet by none of these Statutes, no Prohibition or Supersedeas is given by express words of the Statute. So upon the Statutes 13 R. 2. cap. 3. 15 R. 2. cap. 2. 2 H. 4. cap. 11. by which it is provided, That Admirals do not meddle with any thing done within the Realm, but onely with things done upon the Seas, &c. a Prohibition lieth to the Court of Admiralty. So upon the Statute of West. 2. cap. 43. against Hospitalers and Templers, if they do against the same Statute, Regist. 39. a. So upon the Statute de Prohibitione regia, Ne laici ad citationem Episcopi conveniant ad recognitionem faciend. vel Sacrament. præstanda nisi in casubus matrimonialibus & Testamentariis, a Prohibition lieth. Regist. 36. b. And so upon the Statute of 2 H. 5. cap. 3. at what time the Libel is grantable by the Law, that it be granted and delivered to the party without difficulty, if the Ecclesiastical Judg, when the cause which depends before him is meer Ecclesiastical, denyeth the Libel, a Prohibition lieth, because that he doth against the Statute; and yet no Prohibition by any express words is given by the Statute. And upon the same Statute the Case was in 4 E. 4. 37. Pierce Peckam took Letters of Administration of the Goods of Rose Brown of the Bishop of London, and afterwards T. T. sued to Thomas Archbishop of Canterbury, That because the said Rose Brown had Goods within his Dioces, he prayed Letters of Administration to be committed to him, upon which the Bishop granted him Letters of Administration, and afterwards

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See Lib. Entr. 450. a Prohibition was upon the Statute that one shall not maintain; and so upon every penal Law.

See F.N.B 39. b. Prohibition to the Common Pleas upon the Stat. of Magna Charta that they do not proceed in a Writ of Præcipe in Capite, where the Land is not holden of the King.

1 & 2 Eliz. Dy. 170, 171 Prohibition upon the Statute of barrenes, and pettit is onely prohibited by implication.

wards T. T. libelled in the Spiritual Court of the Archbiſhop in the Arches againſt Pierce Peckam, to whom the Biſhop of London had committed Letters of Adminiſtration to repeal the ſame: and Pierce Peckam, according to the ſaid Statute, prayed a Copy of the Libel exhibited againſt him, and could not have it, and thereupon he ſued a Prohibition, and upon that an Attachment: And there Catesby Serjeant moved the Court, that a Prohibition did not lie, for two cauſes: 1. That the Statute gives that the Libel ſhall be delivered, but doth not ſay that the Plea in the Spiritual Court ſhall ſurceaſe by Prohibition. 2. The Statute is not intended of matter meer ſpiritual, as that caſe is, to try the Prerogative and the Liberty of the Archbiſhop of Canterbury and the Biſhop of London, in committing of Adminiſtrations. And there Danby Chief Juſtice, If you will not deliver the Libel according to the Statute, you do wrong, which wrong is a temporal matter, and puniſhable at the Common Law; and therefore in this caſe the party ſhall have a ſpecial Prohibition out of this Court, reciting the matter, and the Statute aforeſaid, commanding them to ſurceaſe, until he had the Copy of the Libel delivered unto him: which caſe is a ſtronger caſe then the caſe at the Bar, for that Statute is in the Affirmative, and the ſaid Act of 2 E. 6. cap. 13. is in the Negative, ſcil. That no Suit ſhall be for any Tythes of any Land in kinde where there is Modus Decimandi, for that is the effect of the ſaid Act, as to that point. And always after the ſaid Act, in every Term in the whole Reigns of King E. 6. Queen Mary, and Queen Elizabeth, until this day, Prohibitions have been granted in Cauſa Modi Decimandi, and Judgments given upon many of them, and all the ſame without queſtion made to the contrary. And accordingly all the Judges reſolved in 7 E. 6. Dyer 79. Et contemporanea expoſitio eſt optima & fortiſſima in lege, & a communi obſervantia non eſt recedendum, & minime mutanda ſunt quæ certam habuerunt interpretationem.

And as to the firſt Objection, That the Plea of Modus Decimandi is but accellary unto the Right of Tythes; it was reſolved, that the ſame was of no force, for three cauſes:

1. In this caſe, admitting that there is Modus Decimandi, then by the Cuſtom, and by the Act of 2 E. 6. and the other Acts, the Tythes in kinde are extinct and diſcharged; for one and the ſame Land cannot be ſubject to two manner of Tythes, but the Modus Decimandi is all the Tythe with which the Land is chargeable: As if a Horſe or other thing valuable be given in ſatisfaction of the Duty, the Duty is extinct and gone: and it ſhall be intended, that the Modus Decimandi began at the firſt by real compoſition, by which the Lands were diſcharged of the Tythes, and a yearly ſum in ſatisfaction of them aſſigned to the Parſon, &c. So as in this caſe there is neither Principal nor Accellary, but an Identity of the ſame thing.

2. The Statute of 2 E. 6. being a Prohibition in it ſelf, and that in the Negative, If the Eccleſiaſtical Judg doth againſt it, a Prohibition lieth, as it appeareth clearly before.

3. Although that the Rule be general, yet it appeareth by the Regiſter it ſelf, that a Modus Decimandi is out of it; for there is a Prohibition in Cauſa Modi Decimandi, when Lands are given in ſatisfaction of the Tythes. ☞ 6 15. 41. 46.

As to the ſecond Objection, it was anſwered and reſolved, That that was from, or out of the Queſtion; for ſtatus Quæſtionis non eſt

deliberativus ſed judicialis, what was fit and convenient, but what the Law is: and yet it was ſaid, It ſhall be more inconvenient to have an Eccleſiaſtical Judg, who is not ſworn to do Juſtice, to give ſentence in a caſe between a man of the Clergy and a Lay-man, then for twelve men ſworn to give their Verdict upon hearing of Witneſſes viva voce, before an indifferent Judg, who is ſworn to do Right and Juſtice to both parties: But convenient or inconvenient is not the Queſtion: Alſo they have in the Spiritual Court ſuch infinite exceptions to Witneſſes, that it is at the Will of the Judg with which party he ſhall give his ſentence.

As to the third Objection, it was anſwered and reſolved: Firſt, That ſatisfactio pecuniaria of it ſelf is Temporal: But for as much as the Parſon hath not remedy pro Modo Decimandi at the Common Law, the Parſon by force of the Acts cited before might ſue pro Modo Decimandi in the Eccleſiaſtical Court: but that doth not prove, That if he ſueth for Tythes in kinde, which are utterly extinct, and the Land diſcharged of them, that upon the Plea de Modo Decimandi, that a Prohibition ſhould not lie, for that without all queſtion appeareth by all that which before hath been ſaid, that a Prohibition doth lie. See alſo 12 H. 7. 24. b. Where the original cauſe is Spiritual, and they proceed upon a Temporal, a Prohibition lieth. See 39 E. 3. 22 E 4. Conſultation, That Right of Tythes which is meerly Eccleſiaſtical, yet if the queſtion ariſeth of the limits of a Pariſh, a Prohibition lieth: and this caſe of the limits of a Pariſh was granted by the Lord Chancellor, and not denyed by the other ſide.

As to the Objection, That an Averment is taken of the refuſal of the Plea de Modo Decimandi; it was anſwered and reſolved, That the ſame is of no force for divers cauſes:

1. It is onely to inforce the contempt.

2. If the Spiritual Court ought to have the Tryal de Modo Decimandi, then the refuſal of acceptance of ſuch a Plea ſhould give cauſe of Appeal, and not of Prohibition: as if an Excommunication, Divorce, Hereſie, Simony, &c. be pleaded there, and the Plea refuſed, the ſame gives no cauſe of Prohibition: as, if they deny any Plea, meer ſpiritual Appeal, and no Prohibition lieth.

3. From the begining of the Law, no Iſſue was ever taken upon the refuſal of the plea in Cauſa Modi Decimandi, nor any Conſultation ever granted to them, becauſe they did not refuſe, but allowed the plea.

4. The refuſal is no part of the matter iſſuable or material in the plea; for the ſame is no part of the ſuggeſtion which onely is the ſubſtance of the plea: and therefore the Modus Decimandi is proved by two Witneſſes, according to the Statute of 2 E. 6. cap. 13. and not the refuſal, which proveth, that the Modus Decimandi is onely the matter of the ſuggeſtion, and not the refuſal.

5. All the ſaid five matters of Diſcharge of Tythes mentioned in the ſaid Branch of the Act of 2 E. 6. being contained within a ſuggeſtion, ought to be proved by two Witneſſes, and ſo have been always from the time of the making of the ſaid Act; and therefore the Statute of 2 E. 6. clearly intended, that Prohibitions ſhould be granted in ſuch cauſes.

6. Although that they would allow bona fide de Modo Decimandi without refuſal, yet if the Parſon ſueth there for Tythes in kinde, when the Modus is proved, the ſame being expreſly prohibited by the Act

Act of 2 E. 6. a Prohibition lieth, although the Modus be ſpiritual, as appeareth by the ſaid Book of 4 E. 4. 37. and other the Caſes afore-ſaid.

And afterwards, in the third day of debate of this caſe before his gracious Majeſty, Dr. Bennet and Dr. Martin had reſerved divers conſultations granted in Cauſa Modi Decimandi, thinking that thoſe would make a great impreſſion in the Opinion of the King: and thereupon they ſaid, That Conſultations were the Judgments of Courts had upon deliberation, whereas Prohibitions were onely granted upon ſurmiſes: And they ſhewed four Preſidents:

One, where three joyntly ſued a Prohibition in the caſe of Modo Decimandi, and the Conſultation ſaith, Pro eo quod ſuggeſtio materiaque in eodem contenta minus ſufficiens in Lege exiſtit, &c.

2. Another in Cauſa Modo Decimandi, to be payd to the Parſon or Vicar.

3. Where the Parſon ſued for Tythes in kinde, and the Defendant alledged Modus Decimandi to be payd to the Vicar.

The fourth, where the Parſon libelled for Tythe Wool, and the Defendant alledged a cuſtom, to reap corn, and to make it into ſheaves, and to ſet forth the tenth ſheaf at his charges, and likewiſe of Hay, to ſever it from the nine cocks at his charge, in full ſatisfaction of the Tythes of the Corn, Hay, and Wool.

To which I anſwered, and humbly deſired the Kings Majeſty to obſerve that theſe have been reſerved for the laſt, and center point of their proof: And by them your Majeſty ſhall obſerve theſe things:

1. That the Kings Courts do them Juſtice, when with their conſciences and oaths they can.

2. That all the ſaid Caſes are clear in the Judgment of thoſe who are learned in the Laws, that Conſultation ought by the Law to be granted.

For as unto the firſt preſident, the caſe upon their own ſhewing appeareth to be, Three perſons joyned in one Prohibition for three ſeveral parcels of Land, each of which had a ſeveral manner of Tything; and for that cauſe they could not joyn, when their intereſts were ſeveral; and therefore a Conſultation was granted.

As to the ſecond preſident, The manner of Tything was alledged to be payd to the Parſon or Vicar, which was altogether uncertain.

As to the third preſident, The Modus never came in debate, but whether the Tythes did belong to the Parſon or Vicar: which being betwixt two ſpiritual perſons, the Eccleſiaſtical Court ſhall have Juriſdiction: and therewith agreeth 38 E. 3. 6. cited before by Bacon: and alſo there the Prior was of the Order of the Ciſtercians; for if the Tythes originally belonged to the Parſon, any recompence for them ſhall not bar the Parſon.

As unto the laſt preſident, the ſame was upon the matter of a Cuſtom of a Modus Decimandi for Wool: for to pay the Tythe of Corn or Hay in kinde, in ſatisfaction of Corn, Hay and Wool, cannot be a ſatisfaction for the Wool; for the other two were due of common right: And all this appeareth in the Conſultations themſelves, which they ſhew, but underſtand not. To which the Biſhop of London ſaid, that the words of the Conſultation were, Quod ſuggeſtio prædicta materiaq; in eadem contenta minus ſufficiens in Lege exiſtet, &c. ſo as materia cannot be referred to form, and therefore it ought to extend to the Modus Decimandi.

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To which I anſwered, That when the matter is inſufficiently or uncertainly alledged, the matter it ſelf faileth; for matter ought to be alledged in a good ſentence: and although the matter be in truth ſufficient, yet if it were inſufficiently alledged, the plea wanteth matter. And the Lord Treaſurer ſaid openly to them, that he admired that they would alledg ſuch things which made more againſt them then any thing which had been ſaid. And when the King relied upon the ſaid Prohibition in the Regiſter, when Land is given in diſcharge of Tythes, the Lord Chancellor ſaid, that that was not like to this caſe; for there, by the gift of the Land in diſcharge of Tythes, the Tythes were actually diſcharged: but in the caſe De Modo Decimandi, an annual ſum is payd for the Tythes, and the Land remains charged with the Tythes, but ought to be diſcharged by plea de Modo Decimandi: All which was utterly denyed by me; for the Land was as abſolutely diſcharged of the Tythes in caſu de Modo Decimandi, when an annual ſum ought to be payd, as where Land is given: For all the Records and preſidents of Prohibition in ſuch caſes are, That ſuch a ſum had been always, &c. payd in plenam contentationem, ſatisfactionem & exonerationem omnium & ſingularium Decimarum, &c. And although that the ſum be not payd, yet the Parſon cannot ſue for Tythes in kind, but for the mony: for, as it hath been ſaid before, the Cuſtom and the ſaid Acts of Parliament (where there is a lawful manner of Tything) hath diſcharged the Lands from Tythes in kinde, and prohibited, that no ſuit ſhall be for them. And although that now (as it hath been ſaid) the Parſons, &c. may ſue in the Spiritual Court pro Modo Decimandi, yet without queſtion, at the firſt, the annual payment of mony was as Temporal, as annual profits of Lands were: All which the King heard with much patience. And the Lord Chancellor anſwered not to that which I had anſwered him in, &c.

And after that his moſt excellent Majeſty, with all his Councel, had for three days together heard the allegations on both ſides, He ſaid, That he would maintain the Law of England, and that his Judges ſhould have as great reſpect from all his Subjects as their predeceſſors had had: And for the matter, he ſaid, That for any thing that had been ſaid on the part of the Clergy, that he was not ſatisfied: and adviſed us his Judges to confer amongſt our ſelves, and that nothing be encroached upon the Eccleſiaſtical Juriſdiction, and that they keep themſelves within their lawful Juriſdiction, without unjuſt veration and moleſtation done to his Subjects, and without delay or hindering of Juſtice. And this was the end of theſe three days conſultations.

And note, That Dr. Bennet in his diſcourſe inveighed much againſt the opinion in 8 E. 4. 14. and in my Reports in Wrights Caſe, That the Eccleſiaſtical Judg would not allow a Modus Decimandi; and ſaid, That that was the myſtery of iniquity, and that they would allow it. And the King asked, for what cauſe it was ſo ſaid in the ſaid Books? To which I anſwered, that it appeareth in Linwood, who was Dean of the Arches, and of profound knowledg in the Canon and Civil Law, and who wrote in the Reign of King Henry the fifth, a little before the ſaid Caſe in 8 E. 4. in his title de Decimis, cap. Quoniam propter, &c. fo. 139. b. Quod Decimæ ſolvantur, &c. abſque ulla diminutione: and in the gloſs it is ſaid, Quod Conſuetudo de non Decimando, aut de non bene Decimando non valet. And that being written by a great Canoniſt of England, was the cauſe of the ſaid saying in 8 E. 4. that they would not allow the ſaid plea de Modo Decimandi; for always the Modus

Decimandi

Decimandi is leſſe in value then the Tithes in ſpecie, and then the ſame is againſt their Canon; Quod decimæ ſolvantur abſque diminutione, & quod conſuetudo de non plene Decimando non valet. And it ſeemed to the King, that that Book was a good Cauſe for them in the time of King Edward the fourth to ſay, as they had ſaid; but I ſaid, That I did not relie upon that, but upon the grounds aforeſaid, (ſcil.) The common Law, Statute-Laws, and the continuall and infinite judgements and judiciall proceedings, and that if any Canon or Conſtitution be againſt the ſame, ſuch Canon and Conſtitution, &c. is void by the Statute of 25. H. 8. Cap. 19. which ſee and note: For all Canons, Conſtitutions, &c. againſt the Prerogative of the King, the common Laws, Statutes, or Cuſtoms of the Realm are void.

Laſtly, the King ſaid; That the high Commiſſion ought not to meddle with any thing but that which is enormious and exorbitant, and cannot permit the ordinary Proces of the Eccleſiaſticall Law; and which the ſame Law cannot puniſh. And that was the cauſe of the inſtitution of the ſame Commiſſion, and therefore, although every offence, ex vi termini, is enormious, yet in the Statute it is to be intended of ſuch an offence, is extra omnem normam, as Hereſie, Schiſme, Inceſt, and the like great offences: For the King ſaid, That it was not reaſon that the high Commiſſion ſhould have conuſance of common offences, but to leave them to Ordinaries, ſcil. becauſe, that the party cannot have any appeal in caſe the high Commiſſon ſhall determine of it. And the King thought that two high Commiſſions, for either Province one, ſhould be ſufficient for all England, and no more.

XV. Mich. 39 and 40 Eliz. in the Kings Bench.

Bedell and Shermans Caſe. 2 Inſt 650

MIch. 39 and 40 Eliz. which is entred Mich. 40 Eliz. in the com. Pleas, Rot. 699 Cantabr. the Caſe was this: Robert Bedel, Gent. and Sarah his wife, Farmors of the Rectory of Litlington in the County of Cambridge, brought an Action of Debt againſt John Sherman, in the cuſtody of the Marſhall of the Marſhalſey, and demanded 550 l. And declared, that the Maſter and Fellows of Clare-Hall in Cambridge, were ſeiſed of the ſaid Rectory in fee, in right of the ſaid Colledge, and in June 10. 29 Eliz. by Indenture demiſed to Chriſtopher Pheſant the ſaid Rectorie, for 21 years, rendering 17 l. 15 s. 5 d. and reſerving Kent-corn according to the Statute, &c. which Kent was the ancient Kent, who entred into the ſaid Rectory, and was poſſeſſed, and aſſigned all his intereſt thereof to one Matthew Bird, who made his laſt Will and Teſtament, and made Sarah his wife his Executrix, and died; Sarah proved the Will, and entred, and was thereof poſſeſſed as Executrix, and took to husband the ſaid Robert Bedel, by force whereof, they in the Right of the ſaid Sarah, entred, and were poſſeſſed thereof; and that the Defendant was then Tenant, and ſeiſed for his life of 300 acres of arable Lands in Litlington aforeſaid, which ought to pay Tithes to the Rector of Litlington, and in anno 38 Eliz. the Defendant, grano ſeminavit 200 acres parcel, &c. And that the Tithes of the ſame, did amount to 150 l. and that the Defendant did not divide nor ſet forth the ſame from the 9 parts, but took and carried them away, againſt the form and effect

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of the Statute of 2 E. 6, &c. And the Defendant pleaded Nihil debet, and the Jury found that the Defendant did owe 55 l. and to the reſidue they found Nihil debet, &c. and in arreſt of Judgement, divers matters were moved.

1. That grano ſeminata is too generall and incertain, but it ought to be expreſſed with what kinde of corn the ſame was ſowed.

2. It was moved, If the Parſon ought to have the treble value, the forfeiture being by expreſſe words limited to none by the Act, or that the ſame did belong to the Queen.

3. If the ſame did belong to the Parſon, if he ought to ſue for the ſame in the Eccleſiaſticall Court, or in the Kings Temporall Court.

4. If the husband and wife ſhould joyn in the Action, or the husband alone ſhould have the Action, and upon ſolemn argument at the Barre, and at the Bench, the Judgement was affirmed.

b. 2 Bul. 228.

XVI. Trinity Term 7 Jocob. in the Court of Wards.

John Bailies Caſe.

IT was found by Writ of Diem clauſit extremum, That the ſaid John Bailie, was ſeiſed of a Meſſuage or Tenement, and of, and in the fourth part of one acre of land, late parcel of the Demeſne lands of the Mannor of Newton, in the County of Hereford, in his Demeſne as of fee, and found, the other points of the Writ; and it was holden by the two chief Juſtices, and the chief Barons:

1. That Meſſuagium, vel Tenementum, is uncertain; for Tenementum is nomen collectivum, and may contain land, or any thing which is holden.

2. It was holden, that is was void for the whole, becauſe that no Town is mentioned in the Office where the Meſſuage or Tenement, or the fourth part of the acre lieth, and from the Viſne of the Mannor upon a Traverſe none can come, becauſe it is not affirmed by by the Office, that they are parcel of the Mannor, but Nuper parcel of the Mannor which implieth, that now they are not, and it was holden by them, that no Melius inquirendum ſhall iſſue forth, becauſe that the whole Office is incertain and void.

XVII. Trinity. 7 Jacobi Regis in the Court of Wards.

THe Attorney of the Court of Wards, moved the two chief Juſtices and chief Baron in this Caſe, That a man ſeiſed of lands in fee-ſimple, covenants for the advancement of his ſon, and of his name, and blood, and poſterity, that he will ſtand ſeiſed of them, to the uſe of himſelf for the term of his life, and after to the uſe of his eldeſt ſonne, and to ſuch a woman which he ſhall marry, and to the heirs males of the body of the ſon, and afterwards the father dieth, and after the ſon taketh a wife and dieth; if the wife ſhall take an Eſtate for life, and the doubt was, becauſe the wife of the ſon was not within the Conſiderations, and the uſe was limited to one who was capable (ſcil.) the ſon, and to another who was not capable, and therefore the ſon ſhould take an eſtate in tail executed. But it was reſolved by the ſaid two chief Juſtices and chief Baron,

Baron, That the Wife should take well enough: and as to the first Reason, they resolved, That the Wife was within the consideration, for the consideration was for the advancement of his posterity; and without a Wife, the Son cannot have posterity: also when the Wife of the Son is sure of a Joynture, the same is for the advancement of the Son, for thereby he shall have the better marriage. And as to the second, it was resolved, That the Estate of the Son shall support the use to the Defendant: and when the contingent happeneth, the Estate of the Son shall be changed according to the limitation, scil. to the Son and the woman, and the Heirs of the body of the Son: And so it was resolved in the Kings-Bench by Popham chief Justice, and the whole Court of the Kings-Bench, in the Reign of Queen Eliz. in Sheffields Case, for both points.

XVIII. Trinit. 7 Jacobi Regis: In the Court of Wards.

Sparies Case.

JOhn Spary, seised in fee in the right of his Wife of Lands holden of the Crown by Knights service, had issue by her, and 22 Decemb. anno 9 Eliz. alienes to Edward Lord Stafford; the Wife dyed, the issue of full age, the Lands continue in the hands of the Alienee, or his Assigns; and ten years after the death of the Father, and twelve years after the death of the Mother, Office is found, 7 Jacobi, finding all the special matter after the death of the Mother: the Question was, Whether the mean profits are to be answered to the King: and it was resolved by the said two chief Justices, and the chief Baron, That the King should not have the mean profits, because that the Alienee was in by title; and until Entry the Heir hath no remedy for the mean profits, but that the King might seise and make Livery, because that the Entry of the Heir is lawful by the Statute of 32 H. 8.

XIX. Trinit. 7 Jacobi Regis: In the Court of Wards.

IT was found by force of a Mandamus at Kendal in the County of Westmerland the 21 of December, 6 Jacobi Regis, That George Earl of Cumberland, long before his death, was seised in tayl to him and to the Heirs males of his body, of the Castles and Mannors of Browham, Appleby, &c. the Remainder to Sir Ingram Clifford, with divers Remainders over in tayl; the Remainder to the right Heirs of Henry Earl of Cumberland, Father of the said George: and that the said George, Earl, so seised by Fine and Recovery, conveyed them to the use of himself and Margaret his Wife for their lives, for the Joynture of the said Margaret; and afterwards to the Heirs males of the body of George Earl of Cumberland, and for want of such issue, to the use of Francis, now Earl of Cumberland, and to the Heirs males of his body begotten; and for want of such issue, to the use of the right Heirs of the said George: and afterwards, by another Indenture, conveyed the Fee-simple to Francis, Earl: By force of which, and of

the Statute of uſes, they were ſeiſed accordingly: and afterwards, 30 Octobr. anno 3 Jacobi, the ſaid George Earl of Cumberland dyed without Heir male of his body lawfully begotten: and further found, that Margaret, Counteſs of Cumberland that now is, was alive, and took the profits of the premiſſes from the death of the ſaid George Earl of Cumberland until the taking of that inquiſition, and further found the other points of the Writ.

And firſt it was objected, that here was no dying ſeiſed found by Office, and therefore the Office ſhall be inſufficient: But as to that, it was anſwered and reſolved, That by this Office the King was not entitled by the common Law for then a dying ſeiſed, or at leaſt a dying the day of his death was neceſſary: But this Office is to be maintained upon the Statute of 32 and 34 H. 8. by force of which no dying ſeiſed is requiſite, but rather the contrary, (ſcil.) If the Land be (as this caſe is) conveyed to the Wife, &c. And ſo it was reſolved in Vincents caſe, anno 23 Eliz. where all the Land holden in Capite was conveyed to the younger Son, and yet the eldeſt Son was in Ward, notwithſtanding that nothing deſcended.

The ſecond Objection was, It doth not appear that the Eſtate of the Wife continued in her until the death of the Earl, for the Husband and Wife had alienated the ſame to another; and then no primer ſeiſin ſhall be, as it is agreed in Binghams caſe.

As to that, it was anſwered and reſolved, That the Office was ſufficient prima facie for the King, becauſe it is a thing collateral, and no point of the Writ; and if any ſuch alienation be (which ſhall not be intended) then the ſame ſhall come in of the other part of the Alienee by a Monſtrans de droit; and the caſe at Bar is a ſtronger caſe, becauſe it is found, that the ſaid Counteſs took the profits of the premiſſes from the death of George the Earl, until the finding of the Office.

XX. Trinity Term, 7 Jacobi: In the Court of Wards.

Wills Caſe.

HEnry Wills, being ſeiſed of the fourth part of the Manor of Wryland in the County of Devon, holden of Queen Elizabeth in Socage-tenure in capite, of the ſaid fourth part enfeoffed Zachary Iriſh and others, and their Heirs, to the uſe of the ſaid Henry for the term of his life, and afterwards to the uſe of Thomas Wills his ſecond ſon in tayl, and afterwards to the uſe of Richard Wills his youngeſt ſon in tayl; and for default of ſuch iſſue, to the uſe of the right Heirs of the ſaid Henry: and afterwards the ſaid Henry ſo ſeiſed as aboveſaid dyed, thereof ſeiſed, William Wills, being his Son and Heir of full age; Thomas the ſecond ſon entered as into his Remainder: All this matter is found by Office, and the queſtion was, If the King ought to have primer ſeiſin in this caſe, and that Livery or Ouſter le main ſhall be ſued in this caſe by the Statutes of 32 and 34 H. 8. And it was reſolved by the two chief Juſtices and the chief Baron, that not: if in this caſe by the common Law no Livery or Ouſter le main ſhall be ſued: and that was agreed by them all by the experience and courſe of the Court. See 21 Eliz. Dyer 362. If Tenant in Socage dyeth ſeiſed

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in poſſeſſion his Heir within the age of fourteen years, he ſhall not ſue Livery, but ſhall have an Ouſter le main, una cum exitibus, but otherwiſe it is, if the Heir be of the age of fourteen years, which is his full age for Socage: and therewith agreeth 4 Eliz. Dyer 213.

And two preſidents were ſhewed, which were decreed in the ſame Court by the advice of the Juſtices Aſſiſtants to the Court.

One in Trinity Term, 16 Eliz. Thomas Stavely the Father enfeoffed William Strelley and Thomas Law of the Manor of Ryndly in the County of Nottingham, upon condition that they re-enfeoff the Feoffor and his Wife for their lives, the remainder to Thomas Stavely ſon and heir apparent of the Feoffor in Fee, which Manor was holden of Queen Elizabeth in Socage in capite: and upon conſideration of the ſaving in the Statute of 32 H. 8. next after the clauſe concerning Tenure in Socage in chief, it was reſolved, That no Livery or Ouſter le main ſhould be ſued in ſuch caſe, and the reaſon was, becauſe that the precedent clauſe giveth liberty to him who holdeth in Socage in chief, to make diſpoſition of it, either by act executed, or by Will at his free will and pleaſure: and before the ſaid act, no Livery or Ouſter le main ſhould be ſued in ſuch caſe: and the words of the Saving are, Saving, &c. to the King, &c. all his Right, &c. of primer ſeiſin and relief, &c. for Tenure in Socage, or of the nature of Tenure in Socage in chief, as heretofore hath been uſed and accuſtomed: But there was no uſe or cuſtom before the Act, that the King ſhould have any primer ſeiſin, or relief in ſuch caſe: and the words ſubſequent in the ſaid Saving depend upon the former words, and do not give any primer ſeiſin or relief where none was before.

Another preſident was in Paſc. 37 Eliz. in the Book of Orders, fo. 444. where the caſe was, that William Allet was ſeiſed of certain Lands in Pitſey called Lundſey, holden of the Queen in Socage in chief, and by Deed covenanted to ſtand ſeiſed to the uſe of his Wife for life, and afterwards to the uſe of Richard his younger ſon in Fee, and dyed, his Heir of full age; and all that was found by Office, and it was reſolved, ut ſupra, That no Livery or Ouſter le main ſhould be ſued in that caſe: but the doubt in the caſe at Bar was, becauſe that Henry the Feoffor had a Reverſion in Fee, which deſcended to the ſaid William his eldeſt ſon.

XXI. Trinity Term, anno 7 Jacobi Regis. The Caſe of the Admiralty.

A Bill was preferred in the Star-Chamber againſt Sir Richard Hawkins Vice-Admiral of the County of Devon: and was charged, that one William Hull and others were notorious Pirats upon the High Seas, and ſhewed in certain, what Piracy they had committed: the ſaid Sir Richard Hawkins knowing the ſame, did them receive, abet and comfort within the body of the County, and for bribes and rewards ſuffered them to be diſcharged. And what offence that was, the Court referred to the conſideration of the two chief Juſtices and the chief Baron, who heard Councel of both ſides divers days at Serjeants Inn.

And firſt, it was by them reſolved, that by the Common Law the Admirals ought not to meddle with any thing done within the Realm, but onely with things done upon the Sea; and that appeareth fully by

the Statute of 13 R. 2. cap. 5. by which it appeareth, that such was the Common Law in the time of King Edw. the third, and therewith agreeth the Statute of 2 H. 4. cap. 11. and the Statute of 15 H. 2. cap. 3. That because the Admirals and their Deputies encroach to themselves divers Jurisdictions and Franchises more then they ought to have, Be it enacted, that all Contracts, Pleas and Complaints, and all other things arising within the bodies of the Counties as well by Land as by Water, as also of Wreck of the Sea, the Admiral Court shall not have any conusance, power, or jurisdiction, &c. Nevertheless of the death of a man, and of Mayheme done in great Ships, being in the main stream of great Rivers, onely below the Bridges nigh to the Sea, and not in other places of the same Rivers; and to arrest Ships in the great Flotes for the great Voyage of the King and of his Realm: and by the Statute of 2 H. 5. cap. 6. the Admirals of the King of England have done and used reasonably, according to the ancient Law and Custom, upon the main Sea. See the Statute of 5 Eliz. cap. 5. And all this appeareth to be by the common Law: and with that agreeth Stamford, fo. 51. And if a man be killed or slain within the Arms of the Sea, where a man may see from the one part of the Land to the other, the Coroner shall enquire of it, and not the Admiral, because that the Country may well know it: and he voucheth 8 E. 2. Coron. 399. So saith Stamford, the same proves that by the common Law before the Statute of 2 H. 4. cap. 11. the Admiral shall not have Jurisdiction unless upon the High Sea. See Pla. Com. 37. 6. If the Marshal holdeth Plea out of the Verge, or the Admiral within the body of the County, the same is void. See 2 R. 3. 12. 30 H. 6. 6. by Prisot.

2. It was resolved, that the said Statutes are to be intended of a power to hold Plea, and not of a power to award execution, (scil.) de jurisdictione tenendi placiti, non de jurisdictione exequendi: For notwithstanding the said Statutes, the Judg of the Admiralty may do execution within the body of the County: and therefore in 19 H. 6. 7. the case was, W. T. at Southwark affirmed a Plaint of Trespass in the Court of Admiralty before the Steward of the Earl of Huntington against J. B. of a Trespass done upon the High Sea, upon which issued a Citation to cite the said J. B. to appear before the Steward aforesaid at the common day then next ensuing, directed to P. who served the said Citation: at which day the said J. B. made default: and the usage of the Court is, that if the Defendant maketh default, he shall be amerced by the discretion of the Steward, to the use of the Plaintiff: The which J. B. for his default aforesaid, was amerced to twenty marks; whereupon command was made to the said P. as Minister of the Court aforesaid, to take the goods of the said J. B. to make agreement with the beforesaid W. T. by force of which he for the said twenty marks took five Cows, and an hundred sheep, in execution for the mony aforesaid, in the County of Leicester. And there it is holden by Newton, and the whole Court, that the Statutes restrain the power of the Court of Admiralty to hold Plea of a thing done within the body of the County, but they do not restrain the execution of the same Court to be served upon the Land: for it may be that the party hath not any thing upon the Sea, and then it is reason to have it upon the Land: and if such a Defendant have nothing wherewithall to make agreement, they of the Court have power to take the body of such a Defendant upon the Land in execution.

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In which case these points were observed:

1. Although that the Court of Admiralty is not a Court of Record, because they proceed there according to the Civil Law, (see Brook, Error 77. etc.) yet by custom of the Court they may amerce the Defendant for his default by their discretion. 12 Co. 84. 104 a.

2. That they may make execution for the same of the goods of the Defendant in corpore Comitatus: and if he hath not goods, then they may arrest the body of the Defendant within the body of the County. v. 12 Co. 104 29.

But the great Question between them was, If a man committeth Piracy upon the Sea, and one knowing thereof, receiveth and comforteth the Defendant within the body of the County: if the Admiral and other the Commissioners, by force of the Act of 28 H. 8. cap. 16. may proceed by Indictment and conviction against the Receiver and Abettor, in as much as the offence of the Accessary hath his begining within the body of the County? v. Dy. 391. a.

See this point resolved 3 Eli. Dyer per curiam, which is omitted out of the printed Book.

And it was resolved by them, that such a Receiver and Abettor by the common Law could not be indicted or convicted, because that the common Law cannot take conusance of the original Offence, because that is done out of the Jurisdiction of the common Law; and by consequence, where the common Law cannot punish the principal, the same shall not punish any one as accessary to such a principal. And therefore Coke chief Justice reported to them a Case which was in Suffolk in anno 28 Eliz. where Butler and others upon the Sea, next to the Town of Layttaft in Suffolk, robbed divers of the Queens subjects, and spoyled them of their goods, which goods they brought into Norfolk; and there they were apprehended, and there brought before me, then a Justice of the Peace within the same County, whom I examined, and in the end they confessed a cruel and barbarous Piracy, and that those goods which then they had with them, were part of the goods which they had robbed from the Queens subjects upon the High Sea: and I was of opinion, that in that case it could not be Felony punishable by the common Law, because that the original act, (scil.) the taking of them, was not any offence whereof the common Law taketh knowledg; and by consequence, the bringing of them into a County could not make the same Felony punishable by our Law: and it is not like, where one stealeth goods in one County, and brings them into another, there he may be indicted of Felony in any of the Counties, because that the original act was Felony, whereof the common Law taketh knowledg: and yet notwithstanding I committed them to the Gaol, until the coming of the Justices of Assises. And at the next Assises the Opinion of Wray chief Justice, and Periam Justices of Assise, was, That for as much as the common Law doth not take notice of the original Offence, the bringing of the goods stoln upon the Sea into a County, did not make the same punishable at the common Law: and thereupon they were committed to Sir Robert Southwell, then Vice-Admiral of the said Counties: and this in effect agrees with Lacies case, which see in my Reports cited in Binghams case in the 2 Reports 93. and in Constables case, C. 5. Reports 107.

See the Piracy was Felony, the Book of 40 Assis. 25. by Schard. where a Master or Captain of a Ship, together with some Englishmen, robbed the Kings subjects upon the High Seas; where he saith, that it was Felony in the Norman Captain, and Treason in the Englishmen his companions: and the reason of the said case was, because the Normans were not then under the Obedience and Allegiance of the King of

of England (for King John loſt Normandy) and for that cauſe Piracy was but Felony in the Norman, but in the Engliſh, who were under the Obedience and Allegiance of the King of England, the ſame was adjudged Treaſon, which is to be underſtood of Petit Treaſon, which was High Treaſon before: and therefore in that caſe, the Pirates being apprehended, the Norman Captain was hanged, and the Engliſh men were hanged and drawn, as appeareth by the ſame Book: ſee Stamford 10.

And ſome objected, and were of opinion, That Treaſons done out of the Realm might have bin determined by the common Law; but truly the ſame could not be puniſhable, but onely by the Civil Law before the Admiral, or by Act of Parliament, as all Foreign Treaſons and Felonies were by the common Law: and therefore where it is declared by the Statute of 25 E. 3. That adherence to the Enemies of the King within England, or elſewhere, is Treaſon, the ſame ſhall be tryed by the common Law: but where it is done out of the Realm, the Offendor ſhall not be attainted but by Parliament, until the Statute of 35 H. 8. cap. 2. although that there are Opinions in ſome Books to the contrary: ſee 5 R: 2. Quare impedit, &c.

XXII. Trinit. 7 Jacobi Regis: In the Common-Pleas.

Pettus and Godſalves Caſe. 2 Bulſ 200.

IN a Fine levyed Trinity Term, anno quinto of this King, between John Pettus Eſq; Plaintiff, and Roger Godſalve and others, Defendants of the Manor of Caſtre, with the appurtenances, &c. in the County of Norfolk, where in the third proclamation upon the Foot of the ſame Fine the ſaid proclamation is ſaid to have been made in the ſixth year of the King that now is, which ought to have been anno quinto of the King: and whereas upon the Foot of the ſame Fine, the fourth proclamation is altogether left out, becauſe upon the view of the proclamations upon Dorſis, upon Record, not finis ejuſdem Termini per Juſticiarias, remaining with the Chyrographer, and the Book of the ſaid Chyrography, in which the ſaid proclamations were firſt entered, it appeareth, that the ſaid proclamations were rightly and duly made, therefore it was adjudged, that the Errors or defects aforeſaid ſhould be amended, and made to agree as well with the proclamation upon Record of the ſaid Fine, and Entry of the ſaid Book, as with the other proclamations in Dorſis ſuper pedes aliorum finium of the ſame Term: and this was done upon the motion of Haughton Serjeant at Law.

XXIII. Mich. 7 Jacobi: In the Court of Wards.

Sammes Caſe. Lea. 111.

JOhn Sammes being ſeiſed of Grany Mead by Copy of Court Roll of the Manor of Tolleſham the great, of which Sir Thomas Beckingham, &c. and held the ſame of the King by Knights ſervice in capite; Sir Thomas by his Deed indented, dated the 22 of December in the firſt

firſt year of King James, made between him of the one part, and the ſaid John Sammes and George Sammes Son and Heir apparent of the ſaid John of the other part, did bargain, ſell, grant, enfeoff, releaſe, and confirm unto the ſaid John Sammes the ſaid Head called Grany Head, to have and to hold the ſaid Head unto the ſaid John Sammes and George Sammes, and their Heirs and Aſſigns, to the onely uſe and behoof of the ſaid John Sammes and George Sammes, their Heirs and Aſſigns for ever: and by the ſame Indenture Sir Thomas did covenant with John and George, to make further aſſurance to John and George, and their Heirs, to the uſe of them and their Heirs, and Livery and Seiſin was made and delivered according to the true intent of the ſaid Indentures of the within mentioned premiſſes to the uſes within mentioned.

John Sammes the Father dyeth, George Sammes his Son and Heir being within age, the Queſtion was, Whether George Sammes ſhould be in Ward to the King or no? And in this caſe three points were reſolved:

1. For as much as George was not named in the premiſſes, he cannot take by the Habendum; and the Livery made according to the intent of the Indenture, doth not give any thing to George, becauſe the Indenture as to him is voyd: but although the Feoffment be good onely to John and his Heirs, yet the uſe limited to the uſe of John and George, and their Heirs, is good.

2. If the Eſtate had been conveyed to John and his Heirs by the Releaſe or Confirmation, as it well may be to a Tenant by Copy of Court Roll, the uſe limited to them is good: for upon a Releaſe which creates an Eſtate, a uſe may be limited, or a Rent reſerved without queſtion; but upon a Releaſe or Confirmation, which enures by way of Mitter le droit, an uſe cannot be limited, or a Rent reſerved.

But the third was of greater doubt, If in this caſe the Father and Son were Joynt-tenants, or Tenants in common? For it was objected, when the Father is onely enfeoffed to the onely uſe of him and his Son, and their Heirs in the Per, that in this caſe, they ſhall be Tenants in common. By the Feoffment the Father is in by the common Law in the Per, and then the limitation of the uſe to him and his Son, and to their Heirs, cannot deveſt the Eſtate, which was veſted in him by the common Law, out of him, and veſt the Eſtate in him in the Poſt by force of the Statute, according to the limitation of the uſe: and therefore, as to one moyety, the Father ſhall be in by force of the Feoffment in the Per, and the Son, as to the other moyety, ſhall be in by force of the Statute, according to the limitation of the uſe in the Poſt, and by conſequence they ſhall be Tenants in common. But it was anſwered and reſolved, That they were Joynt-tenants, and that the Son in the Caſe at Bar ſhould have the ſaid Grange by the Survivor: for if at the common Law A. had been enfeoffed to the uſe of him and B. and their Heirs, although that he was onely ſeiſed of the Land, the uſe was joyntly to A. and B. For a uſe ſhall not be ſuſpended or extinct by a ſole ſeiſin, or joynt ſeiſin of the Land: and therefore if A. and B. be enfeoffed to the uſe of A. and his Heirs, and A. dyeth, the entire uſe ſhall deſcend to his Heir: as it appeareth in 13 H. 7. 6. in Steners Caſe: and by the Statute of 27 H. 8. cap. 10. of Uſes, it appeareth, That when ſeveral perſons are ſeiſed to the uſe of any of them, that the Eſtate ſhall be executed according to the uſe.

And as to that which was ſaid, That the Eſtate of the Land which the Father hath in the Land, as to the moyety of the uſe which he himſelf

ſelf hath, ſhall not be deveſted out of him: To that it was anſwered and reſolved, What that ſhall well be: for if a man maketh a Feoffment in Fee to one, to the uſe of him and the Heirs of his body, in this caſe, for the benefit of the iſſue, the Statute according to the limitation of the uſes, deveſts the Eſtate veſted in him by the common Law, and executes the ſame in himſelf by force of the Statute; and yet the ſame is out of the words of the Statute of 27 H. 8. which are, Where any perſon, &c. ſtand or be ſeiſed, &c. to the uſe of any other perſon; and here he is ſeiſed to the uſe of himſelf: and the other clauſe is, Where divers and many perſons, &c. be joyntly ſeiſed, &c. to the uſe of any of them, &c. and in this caſe A. is ſole ſeiſed: But the Statute of 27 H. 8. hath been always beneficially expounded, to ſatisfie the intention of the parties, which is the direction of the uſes according to the Rule of the Law. So if a man, ſeiſed of Lands in Fee-ſimple, by Deed covenant with another, that he and his Heirs will ſtand ſeiſed of the ſame Land, to the uſe of himſelf and the Heirs of his body, or unto the uſe of himſelf for life, the remainder over in Fee; in that caſe, by the operation of the Statute, the Eſtate which he hath at the common Law is deveſted, and a new Eſtate veſted in himſelf, according to the limitation of the uſe. And it is to be known, that an uſe of Land (which is but a pernency of the profits) is no new thing, but part of that which the owner of the Land had: and therefore, if Tenant in Borough-Engliſh, or a man ſeiſed of the part of his Mother, maketh a Feoffment to another without conſideration, the younger Son in the one caſe, and the Heir on the part of the Mother on the other, ſhall have the uſe, as they ſhould have the Land it ſelf, if no Feoffment had been made: as it is holden in 5 E. 4. 7. See 4 and 5 Phil. and Mar. Dyer 163. So if a man maketh a Feoffment unto the uſe of another in tayl, and afterwards to the uſe of his right Heirs, the Feoffor hath the Reverſion of the Land in him; for if the Donee dyeth without iſſe, the Law giveth the uſe, which was part of the Land, to him: and ſo it was reſolved, Trinity, 31 Eliz. between Fenwick and Milford in the Kings-Bench. So in 28 H. 8. Dyer 11. the Lord Roſſes Caſe: A man ſeiſed of one Acre by Priority, and of another Acre by Poſteriority, and makes a Feoffment in Fee of both to his uſe: and it was adjudged, that although both paſs at one inſtant, yet the Law ſhall make a Priority of the uſes, as if it were of the Land it ſelf: which proves, that the uſe is not any new thing, for then there ſhould be no Priority in the Caſe: See 13 H. 7. b. by Butler.

So in the Caſe at Bar, The uſe limited to the Feoffee and another, is not any new thing, but the pernancy of the old profits of the Land, which well may be limited to the Feoffee and another joyntly: But if the uſe had been onely limited to the Feoffee and his Heirs, there, becauſe there is not any limitation to another perſon, nec in præſenti, nec in futuro, he ſhall be in by force of the Feoffment.

And it was reſolved, That Joynt-tenants might be ſeiſed to an uſe, although that they come to it at ſeveral times: as, if a man maketh a Feoffment in Fee to the uſe of himſelf, and to ſuch a woman, which he ſhall after marry, for term of their lives, or in tayl, or in fee; in this caſe, if after he marryeth a Wife, ſhe ſhall take joyntly with him, although that they take the uſe at ſeveral times, for they derive the uſe out of the ſame fountain and Freehold, ſcil. the Feoffment: See 17 Eliz. Dyer 340. So if a Diſſeiſin be had to the uſe of two, and one of them agreeth at one time, and the other at another time, they ſhall be

be Joynt-tenants; but otherwiſe it is of Eſtates which paſs by the common Law: and therefore if a Grant be made by deed to one man for term of life, the Remainder to the right Heirs of A. and B. in Fee, and A. hath iſſue and dyeth, and afterwards B. hath iſſue and dyeth, and then the Tenant for life dyeth; in that caſe the Heirs of A. and B. are not Joynt-tenants, nor ſhall joyn in a Scire facias to execute the Fine, 24 E. 3. Joynder in Action 10. becauſe that although the remainder be limited by one Fine, and by joynt words, yet becauſe that by the death of A. the Remainder as unto the moyety veſted in his Heir, and by the death of B. the other moyety veſted in his Heir at ſeveral times, they cannot be Joynt-tenants: But in the caſe of a uſe, the Husband taketh all the uſe in the mean time; and when he marryeth, the Wife takes it by force of the Feoffment and the limitation of the uſe joyntly with him, for there is not any fraction and ſeveral veſting by parcels, as in the other caſe, and ſuch is the difference. See 18 E. 3. 28. And upon the whole matter it was reſolved, That becauſe in the principal caſe the Father and Son were Joynt-tenants by the original purchaſe, that the Son having the Land by Survivor, ſhould not be in Ward: and accordingly it was ſo decreed.

XXIV. Paſc. 39 Eliz. Rot. 233. In the Kings-Bench.

Collins and Hardings Caſe.

The Caſe between Collins and Harding was, A man ſeiſed of Lands in Fee, and alſo of Lands by Copy of Court Roll in Fee, according to the Cuſtom of the Mannor, made one entire Demiſe of the Lands in Fee, and of the Lands holden by Copy according to the Cuſtom, to Harding for years, rendering one entire Rent: and afterwards the Leſſor ſurrendered the Copyhold Land to the uſe of Collins and his Heirs: and at another time granted by Deed the Reverſion of the Freehold Lands to Collins in Fee, and Harding attorned; and afterwards for the Rent behinde, Collins brought an Action of Debt for the whole Rent: And it was objected, That the reſervation of the Rent was an entire contract, and by the Act of the Leſſee the ſame cannot be apportioned: and therefore if one demiſeth three Acres, rendering 3 s. Rent, and afterwards bargaineth and ſelleth, by Deed indented and inrolled, the Reverſion of one Acre, the whole Rent is gone, becauſe that the Contract is entire and cannot be ſevered by the Act of the Leſſor: Alſo the Leſſee by that ſhall be ſubject to two Fealties, where he was ſubject but to one before.

As to theſe points, it was anſwered and reſolved, That the Contract was not entire, but that the ſame by the Act of the Leſſor, and the aſſent of the Leſſee, might be divided and ſevered: for the Rent is incident to the Reverſion, and the Reverſion is ſeverable, and by conſequence the Rent alſo: for acceſſorium ſequitur naturam ſui principalis, and that cannot be ſevered or divided by the aſſent of the Leſſee, or expreſs attornment, or implyed by force of an Act of Parliament, to which every one is a party, as by force of the Statute of Inrolments, or of Uſes, &c. And as to the two Fealties, to that the Leſſee ſhall be ſubject, although that the Rent ſhall be extinct: for Fealty is by neceſſity of Law incident to the Reverſion, and to every part of it; but the Rent ſhall be divided pro rata portionis: and ſo it was adjudged.

And it was also adjudged. That although Collins cometh to the Reversion by several Conveyances, and at several times, yet he might bring an Action of Debt for the whole Rent. Hill. 43 Eliz. Rot. 243. Welt and Lassels Case: A man made a Lease for years of certain Lands, and afterwards deviseth the Reversion of two parts to one, he shall have two parts of the Rent; and he may have an Action of Debt for the same, and have Judgment to recover. Hill. 42 Eliz. Rot. 108. in the Common-Pleas, Ewer and Moyls Case: The Devisee of the Reversion of part shall avow for part of the Rent, and such Avowry shall be good and maintainable.

Note well these Cases and Judgments, for they are given upon great reason and consideration, for otherwise great inconvenience would ensue, if by severance of part of the Reversion, the entire Rent should be lost: and the opinion reported by Serjeant Bendloes, in Hill. 6 and 7 E. 6. to the contrary, nihil valet, (scil.) That the Rent in such case shall be lost, because that no contract can be apportioned, which is not Law: For, 1. A Rent reserved upon a Lease for years is more then a Contract, for it is a Rent-service. 2. It is incident to the Reversion which is severable. 3. Upon recovery of part in Waste, or upon entry in part for a forfeiture, or upon surrender of part, the Rent is apportionable.

25. Note; It was adjudged 19 Eliz. in the Kings-Bench, That where one obtained a Prohibition upon Prescription de Modo Decimandi, by payment of a certain sum of mony at a certain day; upon which Issue was taken, and the Jury found the Modus Decimandi by payment of the said sum, but that it had been payd at another day: and the Case was well debated, and at the last it was resolved, That no Consultation should be granted; for although that the day of payment be mistaken, yet it appeareth to the Court, that no Tythes in kinde were due, for which the suit was in the spiritual Court: and the Tryal of the Custom de Modo Decimandi belongeth to the Common Law, and a Consultation shall not be granted where the Spiritual Court hath not Jurisdiction of the Cause: Tanfield, chief Baron, hath the Report of this Case.

XXV. Mich. 7 Jacobi Regis.

IN an Ejectione Firmæ, the Writ and Declaration were of two parts of certain Lands in Hetherset and Windham in Norfolk, and doth not say in two parts, in three parts to be divided; and yet it was good as well in the Declaration as in the Writ: for without question the Writ is good, de duabus partibus, generally, and so is the Register. See 4 E. 3. 162. 2 E. 3. 31. 2 Assis. 1. 10 Assis. 12. 10 E. 3. 511. 11 Ass. 21. 11 E. 3. Bre. 478. 9 H. 6. 36. 17 E. 4. 46. 19 E. 3. Bre. 244. And upon all the said Books it appeareth, that by the intendment and construction of the Law, when any parts are demanded without shewing in how many parts the whole is divided, that there remains but one part not divided: As if two parts are demanded, there remains a third part; and when three parts are divided, three remains a fourth part, &c. But when any demand is of other parts in other form, there he ought to shew the same specialty: as if one demandeth three parts of five

five parts, or four parts of ſix, &c. And according to this difference it was ſo reſolved in Jourdens Caſe in the Kings-Bench: and accordingly Judgment was given in this Term in the Caſe at Bar.

XXVI. Mich. 7 Jacobi Regis: In the Common-Pleas.

Muttons Caſe. 2 Br. 276.

AN Action upon the Caſe was brought againſt Mutton, for calling of the Plaintiff, Sorcerer and Inchantor, who pleaded Not-guilty; and it was found againſt him to the damages of 6 d. And it was holden by the whole Court in the Common-Pleas, that no Action lieth for the ſaid words: for Sortilegium eſt rei futuri per ſortes exploratio: Et Sortilegus ſive Sortilegiſta eſt qui per ſortes futura prænunciat. Inchauntry eſt verbis aut rebus adjunctis aliquid præter naturam moliri: whereof the Poet ſaith,

Carminibus Circes ſocios mutavit Ulyſſis.

See 45 E. 3. 17. One was taken in Southwark with the Head and Viſage of a Dead man, and with a Book of Sorcery in his Mail: and he was brought into the Kings-Bench before Knevet Juſtice, but no Indictment was framed againſt him: for which the Clarks made him ſwear, that he ſhould never after commit any Sorcery; and he was ſent to priſon: and the Head and the Book were burned at Turhill, at the charges of the Priſoner. And the ancient Law was, as it appeareth by Britton, that thoſe who were attainted of Sorcery were burned: but the Law is not ſuch at this day; but he who is convicted of ſuch impoſture and deceit ſhall be fined and impriſoned. And it was ſaid, that it was adjudged, That if one calleth another Witch, that an Action will not lie, for it is too general: Et dicitur Latine Venefica: But if one ſaith, She is a Witch, and hath bewitched ſuch a one to death, an Action upon the Caſe lieth, if in truth he be dead. Conjuration is derived of theſe words, Con and juro: Et propria dicitur quando multi in alicujus pernitiem jurant: And in the Statute of 5 Eliz. cap. 16. it is taken for Invocation of any evil and wicked Spirits, i. eſt conjurare verbis conceptis aliquos malos & iniquos ſpiritus; the ſame is made Felony: But Witchcraft, Inchantment, Charm, or Sorcery, is not felony, if not by them any perſon be killed or dyeth. So that Conjuration eſt verbis conceptis compellere malos & iniquos ſpiritus aliquod facere vel dicere, &c. But a Witch, who works any thing by any evil ſpirit, doth not make any Conjuration or Invocation by any powerful names of the Devil, but the wicked ſpirit comes to her familiarly, and therefore is called a Familiar: But if a man be called a Conjurer, or a Witch, he ſhall not have any Action upon the Caſe, unleſs that he ſaith, That he is a Conjurer of the Devil, or of any evil or wicked ſpirit: or, that one is a Witch, and that ſhe hath bewitched any one to death, as is before ſaid.

And note, that the firſt Statute which was made againſt Conjuration, Witchcraft, Sorcery, and Inchantment, was the Act of 33 H. 8. cap. 8. and by it they were Felony in certain caſes ſpecial: but that Act was repealed by the Statute of 1 E. 6. cap. 12.

XXVII. Mich. Term, 7 Jacobi Regis: In the Court of Wards.

Sir Allen Percies Caſe.

SIr John Fitz and Bridget his Wife, being Tenants for life of a Tenement called Ramſhams, the remainder to Sir John Fitz in tail, the remainder to Bridget in tail, the Reverſion to Sir John and his Heirs: Sir John, and Bridget his Wife, by Indenture demiſed the ſaid Tenement to William Sprey for divers years yet to come (except all Trees of Timber, Oaks and Aſhes, and liberty to carry them away) rendering Rent, and afterwards Sir John dyed, having iſſue Mary his daughter, now the Wife of Sir Allen Percy Knight: and afterwards the ſaid William Sprey demiſed the ſame Tenement to Sir Allen for ſeven years: The Queſtion was, Whether Sir Allen, having the immediate inheritance in the right of his Wife, expectant upon the Eſtate for the life of Bridget, and alſo having the poſſeſſion by the ſaid Demiſe, might cut down the Timber Trees, Oaks, and Aſhes: And it was objected, that he might well do it: for it was reſolved in Saunders Caſe, in the fifth part of my Reports, fo. 12. That if Leſſee for years, or for life, aſſigns over his term or Eſtate unto another, excepting the Mines, or the Trees, or the Clay, &c. that the exception is voyd, becauſe that he cannot except that which he cannot lawfully take, and which doth not belong unto him by the Law. But it was anſwered and reſolved by the two chief Juſtices, and the chief Baron, That in the Caſe at Bar, the Exception was good without queſtion, becauſe that he who hath the Inheritance, joyns in the Leaſe with the Leſſee for life. And it was further reſolved, That if Tenant for life Leaſeth for years, excepting the Timber Trees, the ſame is lawfully and wiſely done: for otherwiſe, if the Leſſee or Aſſignee cutteth down the Trees, the Tenant for life ſhould be puniſhed in Waſte, and ſhould not have any remedy againſt the Leſſee for years: and alſo if he demiſeth the Land without exception, he who hath the immediate Eſtate of Inheritance, by the aſſent of the Leſſee, may cut down all the Timber Trees, which when the term ended, all ſhould be waſted, and then the Tenant for life ſhould not have the Boots which the Law giveth him, nor the pawnage and other profits of the ſaid Trees, which he lawfully might take: But when Tenant for life upon his Leaſe excepteth the Trees, if they be cut down by the Leſſor, the Leſſee or Aſſignee ſhall have an Action of Treſpaſs, Quare vi & armis, and ſhall recover damages according to his loſs.

Fac. 3. 296.

And this caſe is not like to the ſaid caſe of Saunders, which was affirmed to be good Law; for there the Leſſee aſſigned over his whole intereſt, and therefore could not except the Mines, Trees, and Clay, &c. which he had not but as things annexed to the Land: and therefore he could not have them when he had departed with his whole intereſt, nor he could not take them either for Reparations or otherwiſe: But when Tenant for life Leaſeth for years, except the Timber Trees, the ſame remaineth yet annexed to his Freehold, and he may command the Leſſee to take them for neceſſary Reparations of the Houſes. And in the ſaid caſe of Saunders, a Judgment is cited between Foſter and Miles

Fac. 3. 296.

3. 17.

Plaintiffs,

Plaintiffs, and Spencer and Bourd Defendants, That where Leſſee for years aſſigns over his term, except the Trees, that Waſte in ſuch caſe ſhal be brought againſt the Aſſignee, but in this caſe without queſtion Waſte lieth againſt the Tenant for life, and ſo there is a difference, &c.

XXVIII. Mich. Term, 7 Jacobi Regis: In the Court of Wards.

Hulmes Caſe. Lea. 13.

THe King (in the right of his Dutchy of Lancaſter) Lord: Richard Hulm (ſeiſed of the Manor of Male in the County of Lancaſter, holden of the King as of his Dutchy by Knights ſervice) Meſne: and Robert Male (ſeiſed of Lands in Male, holden of the Meſn as of his ſaid Manor by Knights ſervice) Tenant. Richard Hulm dyed; after whoſe death, 31 Hen. the eight, it was found, that he dyed ſeiſed of the ſaid Penalty, and that the ſame deſcended to Edward his Son and Heir within age, and found the Tenure aforeſaid, &c. And during the time that he was within age, Robert Male the Tenant dyed; after which, in anno 35 H. 8. it was found by Office, That Robert Male dyed ſeiſed of the ſaid Tenancy peravail, and that the ſame deſcended to Richard his Son and Heir within age, and that the ſaid Tenancy was holden of the King, as of his ſaid Dutchy, by Knights ſervice; whereas in truth the ſame was holden of Edward Hulm, then in Ward of the King, as of his Penalty: for which the King ſeiſed the Ward of the Heir of the Tenant. And afterwards, anno quarto Jacobi Regis that now is, after the death of Richard Male, who was lineal Heir of the ſaid Robert Male, by another Office it was found, That the ſaid Richard dyed ſeiſed of the ſaid Tenancy, and held the ſame of the King, as of his Dutchy, by Knights ſervice, his Heir within age: whereupon Richard Hulm, Coſin and Heir of the ſaid Richard Hulm, had preferred a Bill to be admitted to his Traverſe of the ſaid Office found in quarto Jacobi Regis: And the Queſtion was, Whether the Office found in 35 H. 8. be any eſtoppel to the ſaid Hulm, to Traverſe the ſaid laſt Office? or if that the ſaid Hulm ſhould be driven firſt to Traverſe the Office of 35 H. 8.

And it was objected, That he ought firſt to Traverſe the Office of 35 H. 8. as in the Caſe of 26 E. 3. 65. That if two Fines be levyed of Lands in ancient Demeſn, the Lord of whom the Land is holden ought to have a Writ of Deceit to reverſe the firſt Fine; and in that the ſecond Fine ſhall not be a Bar: And that the firſt Office ſhall ſtand as long as the ſame remains in force.

To which it was anſwered and reſolved by the two Chief Juſtices and the Chief Baron, and the Court of Wards, That the finding of an Office is not any eſtoppel, for that is but an enqueſt of Office, and the party grieved ſhall have a Traverſe to it, as it hath been confeſſed, and therefore without queſtion the ſame is no eſtoppel; But when an Office is found falſly, that Land is holden of the King by Knights ſervice in capite, or of the King himſelf in Socage, if the Heir ſueth a general Livery, now it is holden in 46 E. 3. 12. by Mowbray and Perſey, that he ſhall not after add, that the Land is not holden of the King,

King; but that is not any eſtoppel to the Heir himſelf who ſueth the Livery, and ſhall not conclude his Heir: for ſo ſaith Mowbray himſelf expreſly in 44 Aſſiſ. pl. 35. That an Eſtoppel by ſuing of Livery ſhall eſtop onely himſelf the Heir during his life: And in 1 H. 4. 6. b. there the caſe is put of expreſs confeſſion and ſuing of Livery by the iſſue in tayl upon a falſe Office: and there it is holden, that the Jurors upon a new Diem clauſit extremum, after the death of ſuch ſpecial Heir, are at large, according to their conſcience, to finde that the Land is not holden, &c. for they are ſworn ad veritatem dicendum: and their finding is called veredictum, quaſi dictum veritatis; which reaſon alſo ſhall ſerve, when the Heir in Fee-ſimple ſueth Livery upon a falſe Office, and the Jurors after his death ought to finde according to the truth: So it is ſaid 33 H. 6. 7. by Laicon, that if two ſiſters be found Heirs, whereof the one is a Baſtard, if they joyn in a Suit of Livery, the which joyneth with the Baſtard in the Livery, ſhall not alledg Baſtardy in the other: but there is no Book that ſaith, that the Eſtoppel ſhall endure longer then during his life: and when Livery is ſued by a ſpecial Heir, the force and effect of the Livery is executed and determined by his death, and by that the Eſtoppel is expired with the death of the Heir; but that is to be intended of a general Livery: but a ſpecial Livery ſhall not conclude one: But as it is expreſſed, the words of a general Livery are; When the Heir is found of full age: Rex Eſcheatori, &c. Scias quod cepimus homigium J. filii & hæredis B. defuncti de omnibus terris & tenementis quæ idem B. Pater ſuus tenuit de nobis in capite, die quo obiit, & ei terras & tenement. illa reddidimus, ideo tibi præcipimus, &c. And when the Heir was in Ward, at his full age, the Writ of Livery ſhall ſay, Rex, &c. Quia J. filius & hæres B. defuncti qui de nobis tenuit in capite ætatem ſuam coram te ſufficienter probavit, &c. Ceperimus homagium ipſius J. de omnibus terris & tenementis, quæ idem B. Pater ſuus tenuit de nobis in capite die quo obiit, & ei terras & tenement. illa reddidimus, & ideo tibi præcipimus, ut ſupra, &c. Which Writ is the Suit of the Heir, and therefore although that all the words of the Writ are the words of the King, as all the Writs of the King are; and although that the Livery be general, de omnibus terris & tenementis de quibus B. pater J. tenuit de nobis in capite die quo obiit, without direct affirmation that any Manor in particular is holden in capite, and notwithſtanding that the ſame is not at the proſecution of the Kings Writ, and no Judgment upon it; yet becauſe the general Livery is founded upon the Office, and by the Office it was found, That divers Lands or Tenements were holden of the King in capite, for this cauſe the ſuing of the Writ ſhall conclude the Heir onely which ſueth the Livery, and after his death the Jurors in a new Writ of Diem clauſit extremum, are at large, as before is ſaid. And if that Jury finde falſly in a Tenure of the King alſo, the Lord of whom the Land is holden may traverſe that Office: Or if Land be holden of the King, &c. in Socage, the Heir may traverſe the laſt Office, for by that he is grieved onely; and he ſhall not be driven to traverſe the firſt Office: and when the Father ſueth Livery, and dyeth, the concluſion is executed and paſt, as before is ſaid. And note, that there is a ſpecial Livery, but that proceeds of the Grace of the King, and is not the Suit of the Heir, and the King may grant it either at full age, before ætate probanda, &c. or to the Heir within age, as it appeareth in 21 E. 3. 40. And that is general, and ſhall not comprehend any Tenure, as the general Livery doth, and therefore it is not any

eſtoppel

eſtoppel without queſtion. And at the Common Law, a ſpecial Livery might have been granted before any Office found: but now by the Statute of 33 H. 8. cap. 22. it is provided, That no perſon or perſons, having Lands or Tenements above the yearly value of 20 l. ſhall have or ſue any Livery, before inquiſition or Office found, before the Eſcheator or other Commiſſion: But by an expreſs clauſe in the ſame Act, Livery may be made of the Lands and Tenements compriſed or not compriſed in ſuch Office; ſo that if Office be found of any parcel, it is ſufficient: And if the Land in the Office doth exceed 20 l. then the Heir may ſue a general Livery after Office thereof found, as is aforeſaid: but if the Land doth not exceed 5 l. by the year, then a general Livery may be ſued without Office by Warrant of the Maſter of the Wards, &c. See 23 Eliz. Dyer 177. That the Queen ex debito Juſtitiæ is not bound at this day, after the ſaid Act of 33 H. 8. to grant a ſpecial Livery; but it is at her election to grant a ſpecial Livery, or to drive the Heir to a general Livery.

It was alſo reſolved in this Caſe, That the Office of 35 H. 8. was not traverſable, for his own Traverſe ſhall prove, that the King had cauſe to have Wardſhip by reaſon of Ward: And when the King cometh to the poſſeſſion by a falſe Office, or other means, upon a pretence of right, where in truth he hath no right, if it appeareth that the King hath any other right or intereſt to have the Land there, none ſhall traverſe the Office or Title of the King, becauſe that the Judgment in the Traverſe is, Ideo conſideratum eſt, quod manus Domini Regis a poſſeſſione amoveantur, &c. which ought not to be, when it appeareth to the Court, that the King hath right or intereſt to have the Land, and to hold the ſame accordingly: See 4 H. 4. fo. 33. in the Earl of Kents Caſe, &c.

XXIX. Mich. 7 Jacobi Regis.

Parliament.

NOte; The Priviledg, Order, or Cuſtom of Parliament, either of the Upper Houſe, or of the Houſe of Commons, belongs to the determination or deciſion onely of the Court of Parliament: and this appeareth by two notable Preſidents:

The one at the Parliament holden in the 27 year of King Henry the ſixth, There was a Controverſie moved in the Upper Houſe between the Earls of Arundel and of Devonſhire, for their ſeats, places, and preheminences of the ſame, to be had in the Kings preſence, as well in the High Court of Parliament, as in his Councels, and elſewhere: The King, by the advice of the Lords ſpiritual and temporal, committed the ſame to certain Lords of Parliament, who for that they had not leiſure to examine the ſame, it pleaſed the King, by the advice of the Lords at his Parliament, in anno 27 of his Reign, That the Judges of the Land ſhould hear, ſee, and examine the Title, &c. and to report what they conceive herein: The Judges made report as followeth; That this matter (viz. of Honor and precedency between the two Earls, Lords of Parliament) was a matter of Parliament, and belonged to the Kings Highneſs, and the Lords ſpiritual and temporal in Parliament, by them to be decided and determined; yet being there ſo commanded, they ſhewed what they found upon examination, and their Opinions thereupon.

Another Parliament in 31 H. 6. which Parliament begun the ſixth

of

of March, and after it had continued sometime, it was prorogued until the fourteenth of February: and afterwards in Michaelmas Term, anno 31 H. 6. Thomas Thorp, the Speaker of the Commons House, at the Suit of the Duke of Buckingham, was condemned in the Exchequer in 1000 l. damages for a Trespass done to him: The 14 of February, the Commons moved in the Upper House, That their Speaker might be set at liberty, to exercise his place: The Lords refer this Case to the Judges: and Fortescue and Prisoit, the two chief Justices, in the name of all the Judges, after sad consideration and mature deliberation had amongst them, answered and said, That they ought not to answer to this question, for it hath not been used aforetime, That the Justices should in any wise determine the Priviledg of this High Court of Parliament; for it is so high and mighty in its nature, that it may make Laws; and that that is Law, it may make no Law: and the determination and knowledg of that Priviledg belongeth to the Lords of the Parliament, and not to the Justices: But as for proceedings in the lower Courts in such cases, they delivered their Opinions. And in 12 E. 4. 2. in Sir John Pastons case, it is holden, that every Court shall determine and decide the Privileges and Customs of the same Court, &c.

XXX. Hillary Term, 7 Jacobi Regis: In the Star-Chamber.

Heyward and Sir Iohn Whitbrokes Case.

IN the Case between Heyward and Sir John Whitbroke in the Star-Chamber, the Defendant was convicted of divers Misdemeanors, and Fine, and Imprisonment imposed upon him, and damages to the Plaintiff: and it was moved that a special Proces might be made out of that Court to levy the said damages upon the Goods and Lands of the Defendant: and it was referred to the two chief Justices, whether any such Proces might be made? who this Term moved the Case to the chief Baron, and to the other Judges and Barons; and it was unanimously resolved by them, That no such Proces could or ought to be made, neither for the damages nor for the costs given to the Plaintiff: for the Court hath not any power or Jurisdiction to do it, but onely to keep the Defendant in prison until he pay them. For, for the Fine due to the King, the Court of Star-Chamber cannot make forth any Proces for the levying of the same, but they estreat the same into the Exchequer, which hath power by the Law to writ forth Proces to the Sheriff to levy the same. But if a man be convicted in the Star-Chamber for Forgery upon the Statute of 5 Eliz. that in that case, for the double costs and damages, that an English Writ shall be made, directed to the Sheriff, &c. reciting the conviction, and the Statute for the levying of the said costs and damages of the goods and chattels, and profits of the Lands of the Defendant, and to bring in the mony into the Court of Star-Chamber, and the Writ shall be sealed with the great Seal, and the Test of the King: For the Statute of 5 Eliz. hath given Jurisdiction to the Court of Star-Chamber, and power to give Judgment (amongst other things) of the costs and damages, which being given by force of the said Act of Parliament, by consequence

the

the Court by the Act hath power to grant Execution; Quia quando aliquid conceditur ei omnia concedi videntur per quod devenitur ad illud. And it was reſolved, That the giving of the damages to the Plaintiff was begun but of late times: and although that one or two Preſidents were ſhewed againſt this Reſolution, they being againſt the Law, the Judges had not any regard to them. The like Reſolution was in the Caſe of Langdale in that Court.

XXXI. Hillary Term, 7 Jacobi Regis: In the Common-Pleas.

Morſe and Webbs Caſe. 1 Bl. 180.

IN a Replevin brought by John Morſe againſt Robert Webb of the taking of two Oxen the laſt day of November in the third year of the Reign of the King that now is, in a place called the Downfield in Luddington in the County of Worceſter: The Defendant, as Bayliff to William Sherington, Gent. made Conuſance, becauſe that the place where is an Acre of Land which is the Freehold of the ſaid William Sherington, and for damage-feaſants, &c. In Bar, of which Avowry the Plaintiff ſaid, That the ſaid Acre of Land in parcel of Downfield, and that he himſelf, at the time, and before the taking, &c. was and yet is ſeiſed of two yard Land, with the appurtenances, in Luddington aforeſaid: And that he, and all thoſe whoſe Eſtate he hath in the ſaid two yards of Land, time out of minde, &c. have uſed to have Common of paſture per totam contentam, of the ſaid place called the Downfield, whereof, &c. for four Beaſts called Rother Beaſts, and two Beaſts called Horſe-beaſts, and for ſixty Sheep, at certain times and ſeaſons of the year, as to the ſaid two yards Lands, with the appurtenances appertaining: and that he put in the ſaid two Oxen to uſe his Common, &c. And the Defendant did maintain his Avowry, and traverſed the Preſcription, upon which the parties were at iſſue, and the Jury gave a ſpecial Verdict. That before the taking, one Richard Morſe, Father of the ſaid John Morſe, and now Plaintiff, whoſe Heir he is, was ſeiſed of the ſaid two yards Lands, and that the ſaid Richard Morſe, &c. had the Common of Paſture for the ſaid Cattel, per totum contentum of the ſaid Downfield, in manner and form as before is alledged, and ſo ſeiſed; The ſaid Richard Morſe, in the twentieth year of Queen Elizabeth, demiſed to William Thomas and John Fiſher divers parcels of the ſaid two yards Lands, to which, &c. viz. the four Bats of arable, with the Common and intercommon to the ſame belonging, for the term of four hundred years; by force of which the ſaid William Thomas and John Fiſher entered, and were poſſeſſed: and the ſaid Richard ſo ſeiſed, died thereof ſeiſed; by which the ſaid two yards Lands in poſſeſſion and Reverſion deſcended to the ſaid John Morſe the now Plaintiff: And if upon the whole matter, the ſaid John Morſe now hath, and at the time of the taking, &c. had Common of Paſture, &c. for four Beaſts called Rother Beaſts, and two Beaſts called Horſe-beaſts, and for ſixty Sheep, &c. as to the ſaid two Acres of Land, with the appurtenances belonging, in Law or not, the Jury prayed the advice of the Court.

Note, that this Plea began Trin. 5 Jacobi, Rot. 1405. And upon

Argument at the Bar, and at the Bench, it was resolved by the whole Court, that it ought to be found against the Defendant, who had traversed the Prescription: For although that all the two years Lands had been demised for years, yet the Prescription made by the Plaintiff is true; for he is seised in his Demesn as of Fee of the Freehold of the two yards of Land, to which, &c. And without question the Inheritance and Freehold of the Common, after the years determined, is appendant to the said two yard Lands; and therefore clearly the issue is to be found against the Defendant: But if he would take advantage of the matter in Law, he ought (confessing the Common) to have pleaded the said Lease; but when he traverseth the Prescription, he cannot give the same in evidence.

2. It was resolved, That if the said Lease had been pleaded, that the Common, during the Lease for years, is not suspended or discharged; for each of them shall have Common Rateable, and in such manner, that the Land in which, &c. shall not be surcharged: and if so small a parcel be demised, which will not keep one Ox, nor a Sheep, then the whole Common shall remain with the Lessor, so always as the Land in which be not surcharged.

3. It was resolved, That Common appendant unto Land, is as much as to say, Common for Cattel levant and couchant upon the Land in which, &c. So that by the severance of part of the Land to which, &c. no prejudice can come to the Ter-tenant in which, &c.

4. See the Case of in the fourth part of my Reports, fo. was affirmed for good Law: and there is no difference, when the Prescription is for Cattel levant and couchant, and for a certain number of Cattel levant and couchant: But when the Prescription is for Common appurtenant to Land without (alledging that it is for Cattel levant and couchant) there a certain number of the Cattel ought to be expressed, which are intended by the Law to be levant and couchant.

XXXII. Hill. 7 Jacobi Regis: In the Common-Pleas.

Hughes and Crowthers Case. 3 Bu. 380.

In a Replevin, between Robert Hughs Plaintiff, and Richard Crowther Defendant, which began, Trin. 6 Jacobi, Rot. 2220 The Case was, that Charls Fox was seised of six acres of Meadow in Bedston, in the County of Salop, in Fee, and 10 Octob. 9 Eliz. leased the same to Charls Hibbens, and Arthur Hibbens for 60 years, if the aforesaid Charls Hibbens and Arthur Hibbens should so long live, and afterward Charls died; and if the Lease determine by his death was the Question, and it was adjudged, That by his death the Lease was determined; for the life of a man is meer collaterall unto the Estate for years, otherwise it is, if a Lease be made to one for the lives of J. S. and J. N. there the Freehold doth not determine by the death of one of them, for the reasons and causes given in the Case of Brudnel, in the fifth part of my Reports, fol. 9 Which Case was affirmed to be good Law by the whole Court.

V. Ow 126. Xl gr Tal 2 Dur Vi 38. e Growmer.

XXXIII. Eaſter Term, anno 8 Jacobi: In the Common-Pleas.

Heydon and Smiths Caſe. 2 Br. 328. Godb. 172.

RIchard Heydon brought an Action of Treſpaſs againſt Michael Smith and others, of breaking of his Cloſe called the Moor in Ugley in the County of Eſſex, the 25 day of June in the fifty year of the King, & quendam arborem ſuum ad valentiam 40 s. ibidem nuper creſcen. ſuccidérunt: The Defendants ſaid, that the Cloſe is, and at the time of the Treſpaſs was the Freehold of Sir John Leventhrop Knight, &c. and that the ſaid Oak was a Timber Tree of the growth of thirty years and more, and juſtifies the cutting down of the Tree by his commandment: The Plaintiff replyeth and ſaith, That the ſaid Cloſe, and a Houſe, and 28 Acres of Land in Ugley, are Copyhold, and parcel of the ſaid Mannor of Ugley, &c. of which Mannor Edward Leventhrop Eſquire, Father of the ſaid Sir John Leventhrop, was ſeiſed in Fee, and granted the ſaid Houſe, Lands and Cloſe to the ſaid Richard Heydon and his Heirs by the Rod at the Will of the Lord, according to the cuſtom of the ſaid Mannor: and that within the ſaid Mannor there is ſuch a cuſtom, Quod quilibet tenens Cuſtomar. ejuſdem Manerii ſibi, & hæredibus ſuis, ad voluntatem Domini, &c. a toto tempore ſupradicto uſus fuit, & conſuevit ad ejus libitum amputare ramos omnimodum arborum, called Pollingers, or Husbords, ſuper terris & tenem. ſuis Cuſtomar. creſcen. pro ligno combuſtibili, ad like libitum ſuum applicand. & in prædicto Meſſuagio comburend. and alſo to cut down and take at their pleaſure all manner of Trees called Pollengers or Husbords, and all other Timber trees, ſuper ejuſdem Cuſtumariis ſuis creſcen. for the reparation of their Houſes built upon the ſaid Lands and cuſtomary Tenements; and alſo for Ploughbote and Cartbote: and that all Trees called Pollengers or Husbords, and all other trees at the time of the Treſpaſs aforeſaid, or hitherto growing upon the aforeſaid Lands and Tenements cuſtomary of the ſaid Richard Heydon, were not ſufficient, nor did ſerve for the neceſſary uſes aforeſaid: And that the ſaid Richard Heydon, from the time of the ſaid Grant made unto him, had maintained and preſerved all trees, &c. growing upon the ſaid Lands and Tenements to him granted: And that after the death of the ſaid Edward Leventhrop, the ſaid Mannor deſcended to the ſaid Sir John Leventhorp: and that at the time of the Treſpaſs the aforeſaid Meſſuage of the ſaid Richard Heydon was in decay, & egebat neceſſariis reparationibus in Maremio ejuſdem. Upon which the Defendant did demur in Law.

And this Caſe was oftentimes argued at the Bar: and now this Term it was argued at the Bench by the Juſtices: And in this caſe theſe points were reſolved.

1. That the firſt part of the Cuſtom was abſurd and repugnant, ſcil. Quod quilibet tenens Cuſtomarii ejuſdem Manerii habens & tenens aliqua

terras ſeu tenementa Cuſtom. &c. uſus fuit amputare ramos omnimodum arborum, vocat. Pollingers, &c. pro ligno combuſtabili, &c. in prædicto Meſſuagio comburend. (which ought to be in the Meſſuage of the Plaintiff, for no other Meſſuage is mentioned before) which is abſurd and repugnant, That every cuſtomary Tenant ſhould burn his Fuel in the Plaintiffs houſe: But that Branch of the Cuſtom doth not extend unto this caſe: for the laſt part of the cuſtom, which concerneth the cuting down of the Trees, concerns the point in queſtion; and ſo the firſt part of the cuſtom is not material.

It was objected, That the pleading, that the Meſſuage of the Plaintiff was in decay, & egebat neceſſariis reparationibus in maremio ejuſdem, was too general: for the Plaintiff ought to have ſhewed in particular, in what the Meſſuage was in decay: as the Book is in 10 E. 4. 3. He who juſtifieth for Houſebote, &c. ought to ſhew that the Houſe hath cauſe to be repaired, &c.

To which it was anſwered by Coke chief Juſtice, That the ſaid Book proved the pleading in the caſe at Bar was certain enough, ſcil. Quod Meſſuagium præd. egebat neceſſariis reparationibus in maremio, without ſhewing the præciſe certainty: and therewith agrees 7 H. 6. 38. and 34 H. 6. 17.

2. It was alſo anſwered and reſolved, That in this caſe without queſtion it needs not to alledg more certainty, for here the Copyholder according to the cuſtom doth not take it, but the Lord of the Manor doth cut down the Tree, and carryeth it away where the reſt was not ſufficient, and ſo preventeth the Copyholder of his benefit, and therefore he needeth not to ſhew any decay at all, but onely for increaſing of the damages; for the Lord doth the wrong when he cutteth down the Trees which ſhould ſerve for reparations when need ſhould be.

3. It was reſolved, That of common Right, as a thing incident to the Grant, the Copyholder may take Houſebote, Hedgbote, and Plowbote upon his Copyhold: Quia conceſſo uno conceduntur omnia ſine quibus id conſiſtere non poteſt: Et quando aliquis aliquid concedit, concedere videtur & id ſine quo res ipſa eſſe non poteſt: and therewith agreeth 9 H. 4. Waſte 59. But the ſame may be reſtrained by cuſtom, ſcil. That the Copyholder ſhall not take it unleſs by aſſignment of the Lord or his Bayliff, &c.

4. It was reſolved, That the Lord cannot take all the Timber Trees, but he ought to leave ſufficient for the Reparation of the Cuſtomary houſes, and for Ploughbote, &c. for otherwiſe great Depopulation will follow; ſcil. Ruine of the Houſes, and decay of Tillage and Husbandry. And it is to be underſtood, That Bote being an ancient Saxon word, hath two ſignifications; the one compenſatio criminis, as Frithbote, which is as much as to ſay, to be diſcharged from giving amends for the breach of the peace; Manbote, to be diſcharged of amends for the death of man: And ſecondly, in the latter ſignification, (ſcil.) for Reparation, as was Bridgbote, Burghbote, Caſtlebote, Parkbote, &c. ſcil. Reparation of a Bridg, of a Borough, of a Caſtle, of a Park, &c. And it is to be known, that Bote and Eſtovers are all one: Eſtovers are derived of this French word, Eſtouer, i. e. fovere; i. e. to keep warm, to cheriſh, to ſuſtain, to defend: And there are four kinds of Eſtovers, (ſcil.) ardendi, arandi, conſtruendi, & claudendi: (ſcil.) Firebote, Houſebote, Ploughbote, and Hedgbote.

5. It was reſolved, That the Copyholder ſhall have a general Action of Treſpaſs againſt the Lord, Quare clauſum fregit, & arborem ſuam,

ſuam, &c. ſuccidit; for Cuſtom hath fixed it to his Eſtate againſt the Lord: and the Copyholder in this caſe hath as great an intereſt in the Timber Trees, as he hath in his Meſſuage which he holdeth by Copy: and if the Lord breaketh or deſtroyeth the Houſe, without queſtion the Copyholder ſhall have an Action of Treſpaſs againſt his Lord, Quare Domum fregit, and by the ſame Reaſon for the Timber Trees which are annexed to the Land, and which he may take for the Reparation of his Copyhold Meſſuage, and without which the Meſſuage cannot ſtand. Trinit. 40 Eliz. Rot. 37. in the Kings-Bench, between Stebbing and Groſener, The cuſtom of the Mannor of Netherhall in the County of Suffolk was, that every Copyholder might lop the Pollengers upon his Copyhold pro ligno combuſtibili, &c. And the Lord of the Mannor cut down the Pollingers, being upon the Plaintiffs Copyhold, upon which he brought his Action upon the caſe, becauſe that the lops of the Trees in ſuch caſe did belong to the Copyholder, and they were taken by the Lord. See Taylors caſe in the fourth part of my Reports 30 and 31. and ſee 5 H. 4. 2. Guardian in Knight-ſervice, who hath Cuſtodiam terræ, ſhall have an Action of Treſpaſs for cuting down the Trees againſt the Heir who hath the inheritance: Vide 2 H. 4. 12. A Copyholder brought an Action of Treſpaſs, Quare clauſum fregit, & arbores ſuccidit: and ſee 2 E. 4. 15. A Servant who is commanded to carry goods to ſuch a place, ſhall have an Action of Treſpaſs or Appeal: 1 H. 6. 4. 7 H. 4. 15. 19 H. 6. 34. 11 H. 4. 28. If after taking the goods, the owner hath his goods again, yet he ſhall have a general Action of Treſpaſs, and upon the evidence the damages ſhall be mitigated: ſo is the better Opinion in 11 H. 4. 23. That he who hath a ſpecial property of the goods at a certain time, ſhall have a general Action of Treſpaſs againſt him who hath the general property, and upon the evidence damages ſhall be mitigated; but clearly, the Baylee, or he who hath a ſpecial property, ſhall have a general Action of Treſpaſs againſt a ſtranger, and ſhall recover all in damages, becauſe that he is chargeable over. See 21 H. 7. 14. b. acc. And it is holden in 4 H. 7. 3. That Tenant at ſufferance ſhall have an Action of Treſpaſs in reſpect of the poſſeſſion, and if the Defendant plead Not-guilty, but he cannot make title, 30 H. 6. Treſpaſs 10. 15 H. 7. 2. The King, who hath profits of the Land by Out-lawry, ſhall have an Action of Treſpaſs, or take goods damage-feaſants: 35 H. 6. 24. 30 H. 6. Treſp. 10. &c. Tenant at will ſhall have an Action of Treſpaſs: 21 H. 7. 15. and 11 H. 4. 23. If a man Bayl goods which are taken out of his poſſeſſion, if the Baylee recover in Treſpaſs, the ſame ſhall be a good Bar to the Baylee: 5 H. 4. 2. In a Writ of Waſte brought againſt Tenant for life, and aſſigned the Waſte in cutting down of Trees: the Defendant pleaded in Bar, that the Plaintiff himſelf cut them: and Culpeper, the Serjeant of the Plaintiff, objected againſt it, that it ſhould be no Plea, becauſe the Defendant had not any thing in the Freehold, no more then a meer ſtranger; and if a ſtranger had cut down the ſame Trees, he ſhould be chargeable in Waſte. † 2. 629.

Alſo in this caſe, we ſhould be at a miſchief if we ſhould not recover againſt him; for if at another time he bringeth an Action of Treſpaſs againſt us, he ſhall recover damages againſt us for the cutting, id eſt, for the value of the Trees: and yet it was holden by the Court, that the ſame was a good Bar: And it was ſaid by the Court that the Plaintiff was not at any miſchief in this caſe: for in as much as the Defendant

ſhall

ſhall have advantage now to diſcharge himſelf of Waſte againſt the Plaintiff, upon this matter he ſhall be barred for ever of his Action of Treſpaſs, ſcil. to recover the value of the Trees, which was the miſchief objected by Culpeper: But without queſtion he ſhall have an Action of Treſpaſs, Quare clauſum fregit, for the Entry of the Leſſor, and for the cutting of the Trees, but he ſhall not recover the value of the Trees, becauſe he is not chargeable over, but for the ſpecial loſs which he hath, ſcil. for the loſs of the Pawnage and of the ſhadow of the Trees, &c. See Fitz. Treſpaſs ultimo, in the Abridgment: And afterwards, the ſame Term, Judgment was given on the principal caſe for the Plaintiff.

XXXIV. Eaſter Term, 8 Jacobi: In the Common-Pleas.

Yo 163.

The Pariſhioners of St. Alphage in Canterbury by cuſtom ought to chooſe the Pariſh-Clark, whom they choſe accordingly: The Parſon of the Pariſh, by couloz of a new Canon made at the Convocation in the year of the King that now is (which is not of force to take away any Cuſtom) drew the Clark before Doctor Newman, Official of the Archbiſhop of Canterbury, to deprive him, upon the point of the right of Election, and for other cauſes; and upon that it was moved at the Bar to have a Prohibition: And upon the hearing of Doctor Newman and himſelf, and his Counſel, a Prohibition was granted by the whole Court, becauſe the party choſen is a meer temporal man, and the means of chooſing of him, ſcil. the cuſtom, is alſo meer temporal, ſo as the Official cannot deprive him; but upon occaſion the Pariſhioners might diſplace him: And this Office is like to the Office of a Churchwarden, who although they be choſen for two years, yet for cauſe they may diſplace them, as it is holden in 26 H. 8. 5. And although that the execution of the Office concerneth Divine Service, yet the Office it ſelf is meer temporal: See 3 E. 3. Annuity 30. He who is Clark of a Pariſh is removable by the Pariſhioners: See 18 E. 3. 27. A gift in tayl was made of the Serjanty or Clarkſhip of the Church of Lincoln, and there adjudged, that the Office is temporal, and ſhall not be tryed in the Eccleſiaſtical Court, but in the Kings Court: And it is to be known, that the deprivation of a man of a temporal Office, or place, is a temporal thing, upon which no Appeal lyeth by the Statute of 25 H. 8. but an Aſſiſe, as in 4 Eliz. Dyer 209. The Preſident of Magdalen College in Oxford was deprived of the Biſhop of Wincheſter their Viſitor; He ſhall not have an Appeal to the Delegates, for the Deprivation is temporal, and not ſpiritual; but he may have an Aſſiſe: and therewith agreeth the Book of 8 Aſſ. Siracſes Caſe: But if a Dean of a Cathedral Church, of the Patronage of the King, be deprived before the Commiſſioners of the King, he may appeal to the Delegates within the ſaid Act of 25 H. 8. For a Deanry is a ſpiritual promotion, and not temporal: and before the ſaid Act, in ſuch caſe, the Appeal was to Rome immediately.

Mich.

XXXV. Mich. Term, 5 Jacob. Rot. 30. In the Kings-Bench.

Prichard and Hawkins Case.

JOhn Prichard brought an Action upon the Case against Robert Hawkins for slanderous words published the last day of August in the third year of the King, viz. That Prichard which serveth Mistris Shelley did murder John Adams Childe, (Quandam Isabellam Adams modo defunct. filiam cujusdem Johannis Adams, of Williamstre in the County of Glocester, innuendo) upon which a Writ of Error was brought in the Exchequer Chamber upon a Judgment given for Prichard in the Kings-Bench: and the Judgment was reversed in Easter Term, 7 Jacobi, because that it doth not appear, that Isabel was dead at the time of the speaking the words; for tunc defunct. ought to have been in the place of modo defunct.

XXXVI. Easter Term. 8 Jacobi: In the Kings-Bench.

Dison and Bestneys Case.

HUmphrey Dison said of Nicolas Bestney, utter Barester and Counceller of Grays-Inn, Thou a Barester? Thou art no Barester, thou art a Barretor; Thou wert put from the Bar, and thou darest not shew thy self there. Thou study Law? Thou hast as much wit as a Daw. Upon Not-guilty pleaded, the Jury found for the Plaintiff, and assessed damages to 23 l. upon which Judgment was given: and in a Writ of Error in the Exchequer Chamber, the Judgment was affirmed.

XXXVII. Easter Term, 8 Jacobi Regis: In the Kings-Bench.

Smith and Hills Case.

NOah Smith brought an Action of Assault and Battery against Walter Hill in the Kings-Bench, which began Pasc. 7 Jacobi, Rot. 175. upon Not-guilty pleaded, a Verdict and Judgment was for the Plaintiff, and 107 l. assessed for damages and costs. In a Writ of Error brought in the Exchequer Chamber, the Error was assigned in the Venire facias, which was certified by Writ of Certiorari: and upon the Writ no Return was made upon the back of the Writ, which is called Returnum album; and for that cause, this Easter Term the Judgment was reversed.

Trinity

XXXVIII. Trinity Term, 7 Jacobi: In the Court of Wards.

Weſtcots Caſe.

IT was found by a Writ of Diem clauſit extremum, after the death of Roger Weſtcot, That the ſaid Roger the day that he dyed was ſeiſed of and in the moyety of the Mannor of Trewalliard in his Demeſn as of Fee, and of ſuch his Eſtate dyed thereof ſeiſed: and that the moyety of the ſaid Mannor, anno 19 E. 3. was holden of the then Prince, as of his Caſtle of Trematon, parcel of his Dutchy of Cornwall, by Knights-ſervice, as it appeareth by a certain exemplification of Trematon for the ſame Prince, made 9 Marcii, 19 E. 3. And the words of the Extent were, Willielmus de Torr tenet duo feoda & dimid. militis apud Pick, Strikleſtomb, & Trewalliard, per ſervitum militare, & reddit inde per annum 8 d. And it was reſolved by the two chief Juſtices and the chief Baron, That the Office concerning the Tenure was inſufficient and voyd, becauſe that the Verdict of a Jury ought to be full and direct, and not with a prout patet, for by that the whole force of their Verdict relyeth onely upon the Extent, which if it be falſe, he who is grieved ſhall have no remedy by any Traverſe; for they have not found the Tenure indefinite which might be traverſed, but with a prout patet, which makes the Office in that point inſufficient, and upon that a Melius inquirendum ſhall iſſue forth: and therewith agreeth F. N. B. 255. that a Melius inquirendum ſhall be awarded in ſuch a Caſe.

The

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